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(HOUSE OF COMMONS)

(First Session—Twenty-sixth Parliament)

(1963)

STANDING COMMITTEE

ON

ANADA, **BANKING AND COMMERCE**, ✓

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

(No. 1)

(FRIDAY, JULY 26, 1963)

(Respecting

Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing)

(WITNESSES:

(Mr. Eugene Whelan, M.P.; Mr. K. A. Standing, Secretary-Manager, The Ontario Soya-Bean Growers' Marketing Board; Mr. S. T. Paton, Vice-President, The Canadian Bankers' Association and General Manager of the Toronto-Dominion Bank; Mr. C. B. Clark, General Manager, The Royal Bank of Canada.)

(ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963)

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Jewett (<i>Miss</i>),	Pilon,
Boulanger,	Kelly,	Ryan,
Cameron (<i>Nanaimo-</i>	Kindt,	Rynard,
<i>Cowichan-The Islands</i>)	Klein,	Sauvé,
Chaplin,	Lloyd,	Scott,
Chrétien,	Macaluso,	Skoreyko,
Côté (<i>Chicoutimi</i>),	McLean,	Tardif,
Douglas,	Monteith,	Thomas,
Émard,	More,	Thompson,
Flemming,	Morison,	Vincent—50.
Gelber,	Muir (<i>Lisgar</i>),	

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, June 6, 1963.

Ordered,—That Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), be referred to the Standing Committee on Banking and Commerce.

FRIDAY, July 5, 1963.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto; and that the quorum of the said Committee be reduced from 15 to 12 Members, and that Standing Order 65(1)(d) be suspended in relation thereto.

THURSDAY, July 11, 1963.

Ordered,—That the Standing Committee on Banking and Commerce be authorized to sit while the House is sitting.

Attest.

LÉON-J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, July 26, 1963.
(5)

The Standing Committee on Banking and Commerce met at 9.00 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre Dame de Grace*), presided.

Members present: Messrs. Aiken, Asselin (*Notre Dame de Grace*), Asselin (*Richmond-Wolfe*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Gelber, Gray, Habel, Kelly, Klein, Macaluso, Moreau, More, Nesbitt, Olson, Otto, Pascoe, Pilon, Rynard, Thomas.—(21).

In attendance: Mr. Eugene Whelan, M.P.; Mr. K. A. Standing, Secretary-Manager, The Ontario Soya-Bean Growers' Marketing Board; Mr. S. T. Paton, Vice-President of the Canadian Bankers' Association and General Manager of the Toronto-Dominion Bank; Mr. C. B. Clark, Assistant General Manager, The Royal Bank of Canada; Mr. C. F. H. Carson, Q.C., Associate General Counsel; Mr. Hugh L. Robson, Secretary, the Canadian Bankers' Association.

Also in attendance and interpreting: Two Parliamentary Interpreters.

The members proceeded to consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing). At the Chairman's request, the Clerk read the Order of Reference.

On motion of Mr. Klein, seconded by Mr. Otto,

Resolved—That the Committee cause to be printed 1,000 copies in English and 1,000 copies in French of the Minutes of Proceedings and Evidence relating to Bill C-5.

On Clause 1

The Chairman introduced the witnesses. Mr. Paton read the brief of The Canadian Bankers' Association and was questioned, assisted by Mr. Clark.

On a point of order, Mr. Thomas interrupted the questioning to suggest that the members might be in a better position to understand the provisions of the Bill if Mr. Whelan were permitted to explain the background and the circumstances which prompted him to introduce the Bill in the House. After discussion, it was agreed that Mr. Whelan should be permitted to present his brief, followed by presentation of the brief of the Ontario Soya-Bean Growers' Marketing Board. Questioning of The Canadian Bankers' Association representatives would then be resumed, followed by questioning of the other witnesses.

Mr. Whelan then presented a brief outlining the position of the producers and giving the historical background of the Bill.

Mr. Standing presented the brief of the Ontario Soya-Bean Growers' Marketing Board.

The members resumed questioning Mr. Paton, who was assisted by Mr. Clark.

At 11:00 a.m. the members adjourned to attend the sitting of the House, after agreeing to re-convene at 1.30 p.m. this day.

AFTERNOON SITTING

(6)

The Standing Committee on Banking and Commerce resumed at 1.30 o'clock p.m., the Chairman, Mr. Edmund Asselin, presiding.

Members present: Messrs. Aiken, Asselin (*Notre Dame de Grace*), Asselin (*Richmond-Wolfe*), Basford, Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Gelber, Gray, Habel, Jewett (Miss), Kelly, Klein, Lloyd, Macaluso, Moreau, More, Nesbitt, Olson, Otto, Pilon, Thomas.—(22).

In attendance: The same persons as were present at the morning sitting of the Committee.

The members resumed questioning of Mr. Paton of The Canadian Bankers' Association who was assisted by Mr. Clark. On completion of the questioning, the Chairman thanked the representatives of The Canadian Bankers' Association, who then withdrew.

Mr. Standing was questioned concerning the brief of the Ontario Soyabean Growers' Marketing Board, was thanked, and withdrew.

In reply to a question pertaining to hardships arising under provisions of Section 88 of the Bank Act, Mr. Whelan was permitted to read into the record a letter from the British Columbia Federation of Agriculture concerning the effect on some producers of the bankruptcy of a certain packing firm.

The Chairman informed the members that a number of organizations had expressed the wish to present their views to the Committee on Bill C-5, but it would obviously not be possible to hear them all before the summer adjournment. He said that the Sub-Committee on Agenda and Procedure would meet next week to determine the order in which these organizations would be heard.

At 4.45 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, July 26, 1963

The CHAIRMAN: Gentlemen, I will call this meeting to order. I see a quorum.

The bill before us this morning is Bill C-5 and I would ask the clerk to read the order of reference; Miss Ballantine.

The CLERK: Order of reference dated Thursday, June 6, 1963.

Ordered:

That Bill C-5, an act to amend the Bankruptcy Act (Primary Products under Processing), be referred to the standing committee on banking and commerce.

The CHAIRMAN: As this is a public bill, the Minutes of Proceedings and Evidence will be printed. The Committee has authority from the House of Commons to print such papers and evidence as may be ordered by the committee. I think we now require a motion determining the specific number of copies to be printed. For the information of committee members I understand that the number normally is 750 in English and 250 in French but possibly in view of the wide interest that has been displayed in regard to this bill it might be well to increase the number slightly, to perhaps 1,000 in English and 350 in French.

Mr. OTTO: Mr. Chairman, I would amend that suggestion and move that there be printed 1,000 in English and the same number in French.

The CHAIRMAN: Are you making a specific motion? I think that the experience of the past has been that fewer French copies are required. Because of the lesser requirement I do not think there is any real reason for printing the same number in French.

Mr. KLEIN: The difference in cost of printing 300 as compared to 1,000 is very slight.

The CHAIRMAN: That may be so, but one must always remember that it is the taxpayers' money with which we are dealing. In any case, I will entertain any motion you wish to submit.

Mr. OTTO: Mr. Chairman, before the motion is put, I should like to find out why we are meeting here in this room with several air conditioned rooms being available in the other building.

The CHAIRMAN: You are now dealing with another subject. At this moment we are discussing the number of copies to be printed.

Mr. OTTO: Mr. Chairman, I suggest that we determine why we are sitting here rather than in the west block before I second the motion.

The CHAIRMAN: I do not wish to call you to order on this point. I have no objection to answering your question. This room was chosen by the staff of the private bills committee branch because this room is the easiest in which to handle the witnesses and a larger crowd than we have here at the present time.

Mr. GRAY: Mr. Chairman, with all due respect to that decision, I do not think that is the case.

The CHAIRMAN: In any event that is the reason this room was chosen. A suggestion was made late yesterday that we change the selected room to one situated in the west block, but at that time it was decided that such a change would add confusion. However, I am perfectly prepared to take full responsibility for the decision to sit in this room this morning and I apologize to all members of this committee for any undue discomfort they may be subjected to at this time.

Mr. OTTO: Mr. Chairman, in seconding the motion to print 1,000 copies in French instead of 350, I should like to state that there is very little difference in cost involved.

The CHAIRMAN: Normally we print 750 copies in English and 250 copies in French. The suggestion is that we increase the number of copies printed in both languages.

Mr. OTTO: I would suggest that the cost of printing 1,000 is identical to that of printing 350 or 250 copies. I am quite sure that members of this committee realize that once the type is set the cost is almost identical. I see no reason for opposing the motion and I second the motion.

The CHAIRMAN: It has been moved and seconded that we print 1,000 copies in each language of the proceedings and evidence of this committee. Does anyone wish to discuss this motion?

Mr. NESBITT: Mr. Chairman, I support your observation. Over the years it has been found that extra copies printed in the French language are not used. Being of Scottish background, I firmly believe that we should not waste time or money by printing a number of unused copies. I realize that it is very nice to have things done on the basis of a 50-50 split, but the experience of past committees indicates that if extra copies are required they are available. Practice and experience do show that the proposed extra number of copies will not be used.

Mr. OTTO: Mr. Chairman, it was not my desire in seconding the motion that we print 1,000 copies in each language to effect a 50-50 split. I do not really care whether there are any copies printed in French. I seconded the motion because the difference in cost of printing 350 as compared to that of printing 1,000 or 1,500 is minimal. Surely this problem does not warrant further discussion.

The CHAIRMAN: Is there any further discussion in regard to this motion? Are you ready for the question?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Is it agreed?

Motion agreed to.

The CHAIRMAN: We are very pleased this morning to welcome to this committee meeting several representatives of important organizations in this country. I understand that we will have with us Mr. Kenneth Standing of the Ontario soya-bean marketing board; Mr. John Brown of the Ontario fruit and vegetable marketing board; Mr. Jack Howard of the vegetable marketing board and Mr. Keith Mathie, of the tender fruit and vegetable board.

We are also pleased to welcome representatives of The Canadian Bankers' Association; Mr. S. T. Paton, vice president, Canadian Bankers' Association, and general manager, The Toronto-Dominion bank; Mr. C. B. Clark, assistant general manager, The Royal Bank of Canada; C. F. H. Carson, Q.C., associate general counsel and Mr. Hugh L. Robson, secretary of The Canadian Bankers' Association.

Mr. Whelan, the member for Essex South, who introduced the bill in the house, is also present and will be available for questioning by the members.

With the permission of this committee I would suggest that The Canadian Bankers' Association make their presentation at this time. I understand the brief they intend to present to the committee has been circulated only in the English language but that copies printed in French are now available. If any member desires to have a copy printed in French the clerk of this committee has them available here at the present moment.

After the presentation of the various briefs I suggest we then ask members of the committee to put their questions.

Might I suggest at the present moment that we sit tentatively this morning until 12 o'clock? If at that time it appears that by sitting another half an hour, or even an hour, we can terminate the meeting, then we could do so. If not, we could adjourn until, say, two o'clock or even 1:30 and continue this afternoon onwards. Would this be agreeable? I understand it is.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, did we get authority to sit at the same time as the house sits?

The CHAIRMAN: Yes.

Mr. AIKEN: This means that we are not going to adjourn when the house opens?

The CHAIRMAN: That is correct, if this meets with the wishes of the committee.

Mr. AIKEN: It is the first time, to my knowledge, that this has ever been done.

The CHAIRMAN: This committee has a number of "firsts". A few days ago we called a meeting at 1:30—it is the first time it occurred. It is the first time that we had a bill such as Mr. Whelan sent to the committee. If the committee wishes, we can adjourn for a short time at 11 o'clock. I would like to hear opinion on this.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am trying to recall an occasion when the committee sat at the same time as the house.

The CHAIRMAN: I believe the steering committee decided that we would sit right through.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): We did. The only thing I was trying to recall is that some years ago, when the committee had a very heavy program, we were sitting while the house was sitting, but we could start the meeting after Orders of the Day. I do not think we convened the meeting before Orders of the Day. Whether that is possible in the present circumstances I do not know. The Orders of the Day are a long time ahead of us.

Mr. OLSON: I think we should adjourn for thirty or forty-five minutes from 11 o'clock on if it appears that we can finish up within an hour after we come back.

The CHAIRMAN: All right. Supposing we leave that decision until about a quarter to eleven? We will see what progress we have made and whether we are going to have to have two sessions a day or not. I think we must think about this in fairness to the people who have come a long distance to make their depositions. I will call clause 1 and ask the representatives of the Canadian Bankers' Association to present their brief on clause 1—*Primary products revert to producers*. Shall clause 1 carry? Mr. Paton of The Canadian Bankers' Association will present the brief. However, the other gentlemen who are here with him will be also available for questioning following the presentation by Mr. Paton.

Mr. S. T. PATON (*Vice President, The Canadian Bankers' Association and General Manager, The Toronto-Dominion Bank*): Mr. Chairman, ladies and gentlemen, my colleagues and I are very pleased this morning to be in attendance before this committee, and it might be proper for me to identify them

first so you will know subsequently who will be carrying the ball for The Canadian Bankers' Association. On my right is Mr. Clark, next to Mr. Clark is Mr. Carson, and on the end is Mr. Robson. I am here in my official capacity as vice president of The Canadian Bankers' Association.

As you no doubt are aware, The Canadian Bankers' Association consists of eight chartered banks in Canada, and they are represented by their respective general managers. You have before you copies of a brief outlining the association's thoughts on Bill C-5. This brief was prepared somewhat precipitately and we could perhaps have done a better job if we had more time, but I think we indicate in the brief that we have quite strong views against the enactment of this bill. We feel its ramifications are very far reaching and it needs very careful consideration. If it meets with your wish, Mr. Chairman, I shall proceed to read the brief through to you, and following that, and after further representations, we will be pleased to elaborate on it and endeavour to answer any questions which may occur to members of the committee.

The CHAIRMAN: Please proceed in whatever manner you wish.

Mr. PATON: The notes attached to Bill C-5 explain that the bill is designed to secure additional protection for primary producers of the products of agriculture, the forests, fisheries, quarries and mines when processors to whom they supply their products go into bankruptcy. This would be accomplished by exempting such products, whether improved or unimproved, from the assets in bankruptcy and providing that they be vested in the court for sale. Distribution of the proceeds realized by the court from their sale would be in priority of payment as follows:

- (i) Administration costs.
- (ii) Wages and salaries owing to employees of the bankrupt processor in respect of the preceding three months' work.
- (iii) Claims of the producers of the products proved to satisfaction of the court.
- (iv) The trustees of the estate of the bankrupt, subject to any right or interest that a bank incorporated under the Bank Act or the industrial development bank would otherwise have under the Bank Act or the Industrial Development Bank Act, as the case may be.

Section 51A which Bill C-5 proposes to add to the Bankruptcy Act and which is in sweeping terms, provides that all "products", and so on, for which producers have not been paid at the date of the bankruptcy of a wholesale purchaser or shipper of, or dealer in, such products and who has them in his possession, are to be vested in the court in trust for purposes of sale. Proceeds of the sale are to be applied in accordance with the prescribed formula.

If enacted, this provision would have far-reaching effects on the granting of credit for the purpose of financing the processing industry in that it would undermine the basic concept of section 88 and the procedures related thereto upon which a significant proportion of the Canadian industry depends for its finances through the banking system. This is not to say that the banks attach greater importance to the support of processors than they do to the protection of primary producers since the latter also borrow under the provisions of the same section of the Bank Act and depend upon it in similar degree. Banks lend to the producers whom Bill C-5 seeks to protect or the security of potential returns from crops, dairy herds, logging, fishing and all forms of basic production and the financial failure of a processor which reacts in loss to related producers accordingly endangers the safety of other advances made by banks to the producers concerned. It cannot, therefore, be advanced as a general hypothesis that the exercise of the permissive rights of the lender to realize

upon his security works at one level to the disadvantage of borrowers at another level although in this area as in all other areas of normal financial risk specific examples of misfortune can be cited.

The number of small processors experiencing bankruptcy is modest in relation to the total number engaged in the industry and accordingly the number of primary producers who might be expected ultimately to require the benefit of the protection envisioned by Bill C-5 would be commensurately small. The possibility of a future claim for an undetermined amount against the security available to the processor in the form of primary products would, however, undermine the value of section 88 security and such security would have to be heavily discounted. The processors' access to bank financing would be curtailed, as would the scope of his operations. His ability to finance his raw material requirements and the size of his work force would also shrink. Thus, the price of a blanket protection against what in the normal course would only be a nominal risk to the individual producer would far outweigh any benefit of significance to the producing sector as a whole and the latter would, of course, have to bear its share of the price because of the possible dislocation in the requirements for raw material in the industry for which it produces. Moreover, the chain of events described herein would clearly be more likely to affect the smaller producers, wholesalers, processors, and so on, as a group because individuals and concerns in a strong financial position not entirely dependent upon section 88 would still continue to obtain bank credit to the extent they required. The proposed legislation would, therefore, work to the benefit of the larger and better financed processing firms at the expense of the smaller and less well financed. This could only mean the gradual weakening of some proportion of the country's potential to manufacture and process its primary products.

The provisions of Bill C-5 are limited to primary products and would therefore immediately affect only that sector of Canadian production and the processing, shipping, wholesaling, etc. industry related to it but once the primary producers received protection in the form suggested, it would not be long before others who supply ingredients, packaging and other components to the finished product would, with justification, demand similar protection. Nor would it be long before other levels of production would feel the need for protection in some form or another. The manufacturer of secondary products would expect to retain an interest in the finished product of the final processor in the event that the latter went into bankruptcy. In the end the practical value of security under Section 88 would disappear. This does not seem to be in the best interests of the national economy.

Section 88 is the means by which seasonal inventories are carried. The canner, the fish packer, the lumberman, the cheesemaker, all depend on bank credit to carry or cure their product until absorbed by the market. Any legislation which weakens the effectiveness of section 88 security would reduce the amount of credit which is normally available for this purpose. Accordingly, alternate methods of financing would have to be found, probably at increased cost, which in the end could only react to the detriment of the producer.

Furthermore, while the bill makes provision for unpaid wages in its priorities, it overlooks the fact entirely that a large part of bank loans have been used since the commencement of the production season to pay prime producers, at least in part, as well as other suppliers and also to pay several expenses which would be first charges in any case—in particular, wages. The unsold inventories, therefore, have a large cost content paid by the bank which should not be relegated to a secondary position.

Bill C-5 seeks to protect a minority who would benefit from its provisions at the expense of undermining legislation which was designed with wisdom to facilitate production of every kind and which because successive amendments

have kept it viable has played a major role in evolving the nation's present level of productive activity. The proof of this can be found in the volume of financing presently being carried out to-day under the provisions of section 88 of the Bank Act, currently running at approximately one billion dollars.

The effect of the bill, if enacted, would be to amend section 88 of the Bank Act, since the exemptions proposed relate specifically to security available to the banks under that section. The Bankruptcy Act, broadly speaking is of general effect and is not directed to special classes of business whereas the principle implied in Bill C-5 follows the precedent presently embodied in subsection (5) of section 88 of the Bank Act. In our view it would be inappropriate to change the provisions or effect of the latter by means of other legislation particularly at a time when the Bank Act is under exhaustive review.

It was recognized by the senate banking and commerce committee when considering the 1949 revision of the Bankruptcy Act, that the principle enunciated in section 169 (previously 189) should be maintained; that is to say, that the effect of security as a matter of banking, even in relation to bankruptcy law, should be as stated in the Bank Act.

The proposal for court sale in the event of bankruptcy is clearly impracticable. Not only would the procedure be expensive but it would not be suited to the disposal of perishable goods such as fruit and vegetables for which the time available for processing is limited. Nor would sale by the court allow for the procedure in which funds are occasionally made available to complete processing—even after bankruptcy—where such a course appears warranted for attainment of the best liquidation results.

The purpose of Bill C-5 is recognized and appreciated but it will be clear from the foregoing that the approach to the problem should be found through the application of less disruptive measures. Having in mind that the instances commonly recognized as prompting proposals for legislation of this type concern farm products, it may be noted that with a view to protecting primary producers there are excellent and active growers' associations in almost all communities. Since the problem is to find a more reliable way to judge the financial responsibility of a processor, these organizations could request and obtain financial information which would enable them to analyze and advise members as to the credit-worthiness of individual processors who purchase on credit. This would be a much more direct approach to the problem, enabling growers' organizations to take an active part in the protection of their members' interests and would not curtail the sources of credit available to those engaged in the important economic function of bringing the growers' crops to market.

An hon. member has made the statement that it is very difficult, if not impossible, for a supplier to ascertain if the processor has a section 88 loan, (*Hansard*, page 746). The fact is, of course, that every person, upon payment of a fee of twenty-five cents is entitled to have access to and to inspect the registration book at the office of the Bank of Canada in the province where the processor has his place of business and where a notice of intention to give section 88 security must be registered. The Bank Act further provides—section 88, paragraph 4(i)—that any person desiring to ascertain whether a notice of intention given by a processor remains registered may inquire by sending a prepaid telegram or a letter to the agent of the Bank of Canada. If the letter is accompanied by a fee of fifty cents it is the duty of the agent to reply to the inquirer stating the name of the Bank mentioned in the notice of intention.

Some of the smaller processors with proven eligibility who have been assisted under government-sponsored lending programmes designed to assist

small business might be affected. For example, a loan granted by a chartered bank under the provisions of the Small Businesses Loans Act or a loan made by the Industrial Development Bank to assist with financing of machinery, etc. might fail to serve the purpose if the borrower's operating requirements in the way of additional advances from a chartered bank under section 88 of the Bank Act were unavailable.

The CHAIRMAN: Thank you, Mr. Paton. Now, if any members of the committee have any questions they would like to address to Mr. Paton, they may do so. Mr. Gray?

Mr. GRAY: Mr. Chairman, Mr. Paton in his very interesting brief at page two, paragraph three, says:

"The number of small processors experiencing bankruptcy is modest in relation to the total number engaged in the industry and accordingly the number of primary producers who might be expected ultimately to require the benefit of the protection envisioned by Bill C-5 would be commensurately small."

In view of this statement, why does he suggest that there would be a great shrinkage in the total volume of section 88 loans which he goes on to refer to as a possibility in the rest of that paragraph?

Mr. PATON: I would suggest that our reason for making that statement is that basically section 88 security must be free and clear to the banks to enable them to finance industry in a country such as we have, where such a large percentage of our industry is seasonal. If there is any blight or inhibition of that security as a result of legislation superseding the Bank Act, we would not feel as free to lend our depositors' money in the full expectation that we would get it back.

Mr. GRAY: Mr. Paton, do you not rate different types of loan applications in different industries according to your loss experience?

Mr. PATON: No sir; we do not break it down. We judge loan applications in relation to the worth of the individual application. We may perhaps relate our total involvement in a specific industry and keep our eye on the total we have out; but it is not related to our experience in loss.

Mr. GRAY: Are you suggesting that you do not, over all, take into account the relationship of the loss you have in a particular field?

Mr. PATON: You mean so far as continued participation in that field is concerned?

Mr. GRAY: Yes.

Mr. PATON: I would hold to my answer; yes.

Mr. C. B. CLARK (*Assistant General Manager, Royal Bank of Canada*): All I can add would be that if a certain industry were in fact showing a heavy loss record we would certainly in good management have to scrutinize with great care the individual applications in that industry; but the fact that we had a high loss record in a particular field of finance would not in itself influence us to turn down an individual application from that fragment of the economy. The answer is, as Mr. Paton said, no.

Mr. GRAY: Perhaps you can enlighten me further, but I find it difficult to see why, if there are very few people who would go bankrupt and a relatively small number of people to take advantage of this bill, you suggest your banking industry would contemplate a drastic reduction, as you say in your brief, which would amount to \$1 billion in loans.

Mr. PATON: Perhaps our concern is mainly that while this specific bill only refers to a primary producer, this would be followed naturally by similar requests from other participants in the manufacture of that product; for

example, the supplier of cans and sugar and those in other parts of the participation in processing of the primary item. They would have equal rights in applying for similar legislation.

Mr. GRAY: Is not an important distinction that many of the suppliers you mention are people who supply a number of different customers; whereas farmers in many instances supply all their crop to just one customer?

Mr. PATON: Yes, this is correct. As we mention in our brief, we appreciate the purpose of the bill, but we feel that this can be very readily amended by bringing into participation the marketing and growers associations who can obtain financial information from different sources.

Mr. GRAY: Would your banks supply this information to producers and growers associations?

Mr. PATON: As you know, banks have to work under an atmosphere of confidence and secrecy wherein this information is strictly in confidence between the bank and the customer.

Mr. GRAY: What better sources of such information are there available to the growers association; what are the other sources of information available to the growers, if you carry out this alternative protection you have proposed in your brief?

Mr. PATON: First of all perhaps, as stated in paragraph 11, there is access to information. There is no secrecy about section 88 being in existence on the part of any producer, manufacturer or wholesaler. The notice of intention must be registered at the local Bank of Canada office.

Mr. GRAY: Does your association make a practice of informing your farm customers of their opportunity to do this?

Mr. PATON: Not specifically, no.

Mr. GRAY: Do you plan to do this?

Mr. PATON: We could consider this. Section 88 has been in the Bank Act since the nineteenth century—1859; it is not new. I suppose we have taken it as read and assumed that people are aware of it. I would not expect that the individual farmer would know, but I would expect that his associations would be well aware of it.

Mr. GRAY: In paragraph 10 you say:

Since the problem is to find a more reliable way to judge the financial responsibility of a processor, these organizations could request and obtain financial information which would enable them to analyse and advise members as to the credit-worthiness of individual processors who purchase on credit.

Mr. PATON: To start with, if they were representing a substantial number of growers, they would have full authority to go to the processor and demand a financial statement. This is number one.

Mr. GRAY: Are the producers' associations sufficiently widespread throughout the industry to cover all the people who might be involved?

Mr. PATON: Speaking of Ontario, I would say yes; they certainly are in Ontario.

Mr. THOMAS: Mr. Chairman, I would like to rise on what really is a point of procedure. These questions and answers are very interesting, but I happen to know some of the circumstances which underlie this bill and the reasons for it. I feel that we might be further ahead in the committee if we heard the whole story before we get down to these detailed questions. At the present moment we are questioning the bankers in respect of section 88, and so on. But if some of the other members had the full background of this bill and information as to what it seeks to do, we might be better off. We could

possibly have the member for Essex South present his brief and then we would know what he is aiming at and why he has brought in the bill. I do not know what is in his brief, but it might contain the circumstances which inspired him to bring in the bill. I believe that a thorough knowledge of all these things would be the best way for us to have an understanding of these questions.

The CHAIRMAN: The steering committee discussed this but not at any great length. It was my intention to have the producers' associations present their brief first, but none of them are here. They expect to be here by ten o'clock. There was some question concerning the propriety of having the sponsor make the first presentation. However, if it meets with the wishes of the committee, we might suspend the questioning of the representatives of the Canadian Bankers' Association and hear the sponsor, Mr. Whelan, who is with us. After his presentation we could then proceed with the questioning of the representatives of the bankers' association, if you feel this is the way you would like to proceed.

Mr. BASFORD: Mr. Chairman, surely we are not going to bring in someone to make a presentation and send him away without asking questions. I certainly have some questions I would like to direct to the representative of the bankers' association, and others. As I understand it, it is our intention to stand this matter over until the fall and during the summer recess more thought can be given to this after the questions have been asked.

Mr. AIKEN: I agree with Mr. Thomas' suggestion, because we should obtain in a preliminary way the complete points of view and then go into the detailed questioning. However, since it will be only ten minutes until the producers arrive, perhaps we could continue to clear up some of these points until they arrive, and at that time have them present their brief and resume the questioning of the representatives of The Canadian Bankers' Association. I think in that way we will get a clearer picture.

The CHAIRMAN: Gentlemen, may I hear your views on the suggestion of Mr. Thomas that Mr. Whelan be invited at this time to proceed with his brief?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I would like to support Mr. Thomas' view because I have read Mr. Whelan's brief; and while I do not presume to say he is speaking with authority on behalf of the producers it does set out their position clearly as well as giving the historical background. I would think it advisable to have Mr. Whelan present his brief now; it is quite comprehensive, and perhaps after he has done this questioning could at that time be resumed.

The CHAIRMAN: Is that procedure agreeable to the members of this committee?

Mr. GRAY: I am quite satisfied with that, Mr. Chairman; however, it would be, I hope, without prejudice to completing my line of questioning?

The CHAIRMAN: Yes, of course.

Gentlemen, we have set aside the whole day. The steering committee planned to deal with all the people who have come here as witnesses to present their briefs this morning and if necessary we will sit late into the evening.

Mr. Whelan, would you like to present your brief at this time?

It is agreed that following the presentation of Mr. Whelan's brief, outlining the position of the producers, we will resume questioning of the Canadian Bankers' Association. It that agreed?

Some hon. MEMBERS: Agreed.

Mr. WHELAN: Mr. Chairman and members of the committee, this brief which I have is rather lengthy and I will try to go over it as quickly as I can.

As a member of the committee I raised hell yesterday because we were not in an air conditioned room this morning and I still do not know why we are here?

The CHAIRMAN: Order, please.

Mr. WHELAN: I do propose to urge the adoption of Bill C-5 upon you. Owing to our parliamentary procedure, a private member's public bill contains both grievance and remedy. It is the only means by which a private member may bring a public grievance before you. The bill has achieved that purpose. Today we petitioners are here to present our grievance; the respondents, if any, are here to oppose it; and you and your committee, Mr. Chairman, are here to deliberate upon the grievance and, in your wisdom, to recommend to the House of Commons for or against a remedy. This is the democratic way—the right of a minority to petition; the right of a minority to oppose; and the right of the majority to decide. In the broad Canadian view—and this is the view of the petitioners—whatever way the crumpet crumbles, everybody wins.

Other petitioners are here today to give you case histories: to sketch in bare words the personal tragedies that have oppressed and burdened the primary producer and his family when section 88 of the Bank Act combines with the bankruptcy of a processor to inflict upon the producer a financial wound whose gravity is indicated in personal terms of living: so that he, his wife and children may, without fault of their own, be reduced from living in the 20th century to existence in the colonial 19th—a transposition in time, without a matching reduction in cultural needs, that is the ultimate cruelty.

Section 88 of the Bank Act is 102 years old. It is older than Canada is old by six years. It is an 1861 amendment to an 1859 statute of the province of Upper Canada that had been entitled "An Act Granting Additional Facilities in Commercial Transactions" and was later re-titled "An Act Respecting Incorporated Banks".

There is no doubt that section 88 (and section 86—the warehouse receipt provision) were good for the colony of the province of Canada and for the colonial confederation of the British North America colonies that became the colonial Dominion of Canada. Section 88 was good for agriculture and the other primary industries; it was good for processing and the other secondary industries; it was good for banking and commerce: and it was good for the production, manufacture and marketing of the products of the colonial Dominion of Canada—and because it was good it helped to so strengthen the colonial Dominion of Canada economically and, therefore, politically that she climbed to the position Canada holds today: an independent nation with one of the highest gross national production records and one of the highest standards of living in the world today—1963. But 1963 is not 1861, and the infant economy that struggled to survive then is not the highly complex and highly industrialized economy of today.

I have made a rough checklist of the salient economic facts of 1861. I then sought the equivalent of these facts in our economic life today. My purpose was to determine whether the reason for the enactment of section 88 holds good today.

Here is my 1861 list:

(1) In 1861, primary industry of whatever kind was based upon the self-contained, self-sufficient and self-sustaining family unit with little or no employment of outside labour. Like some of the manufacturers of today, the 1861 primary producer produced a number of products (on the farm, he might have a small woodlot—cows, chickens, turkeys, pigs—vegetables, grains, hay, and a few fruits). A failure in one product in a season was undoubtedly a setback: but it was not a disaster.

(2) There was a scattered population with small towns and no large markets either domestically or abroad except for a few products that were exported such as timber, grain and salt fish. The towns people who provided services and bought their necessities were few as compared to the self-sustaining rural family units.

(3) The impact of the earlier canals and, since 1845, the railways, was just beginning to make itself felt. Road networks were only at their beginnings.

(4) There was no mass production either in primary food products or in processed primary food products. Farm machinery had yet to take its great leap forward. Food processing was in its infancy. Canning was only perfected in 1860. Frozen foods and quick-frozen foods were three-quarters of a century away.

(5) Immigration to help develop the colonies by over-producing the primary products so as to create a demand for processors, for transportation to get excess products to domestic and export markets, for specialization of product, for machinery to increase the volume of product: immigration, to itself swell the consumer demand and to provide a built-in population growth: immigration on a massive scale was yet to come.

(6) The production surge of the industrial revolution had not yet made itself strongly felt in the colonies which were still basically primary producers and not industrialized.

(7) Investment. There was little investment in the hinterlands of the British North American colonies. Money was in the hands of the members of the family compacts in each province who lived only in the larger towns. This group acquired fortunes mainly by a monopoly of the highly-paid government and administrative offices and through contracts for supplies to the large British army and naval forces stationed in the colonies. They had no interest in risking their fortunes to develop the rural areas. There were wealthy merchantile families in every province but they invested in the sure thing that returned high and immediate profits—mostly of a consumable or non-productive nature—breweries, distilleries; the export of unfinished timber and rough grain, the import of sugar, rum, molasses, spices, luxury goods for sale in town; shipbuilding for the export-import trade. There were some town factories for the manufacture of goods but, even here, the colonial investors preferred the high, quick and non-risk profits of the import trade.

The greatest source of investment money in the 19th century was the London money market. But in the first half of that century, both the British government and the British investor wrote off the North American colonies as a dead loss to agricultural investment. They knew of these colonies only as a source of the mass production of furs, timber and fish and as a consumer market for the products of their own industries with which they wanted no competition. For agricultural investment they preferred their tropical colonies, such as the West Indies, whose climate allowed of the mass plantation crop. It was the British railroad investor—driven out of Great Britain about 1845 by the highest mileage cost of building railroads in the world (the Parliamentary fees and the legal costs to incorporate a railroad company by private bill amounted to £4,000 a mile—the cost of laying each mile of track) it was the British railroad investor who discovered the investment possibilities of the British North American colonies. How he rejoiced to find that the legislature of Canada would incorporate a railroad company at less than the cost to the legislature for printing and handling costs in order to attract British capital. This was the beginning of the solution to the transportation problem: a solution that was to open up the agricultural areas and to connect these areas with the town markets. At that stage, the British investor did not go further but he had served his purpose for the times as they then were.

(8) Governments. There could be no help from the governments of the provinces by way of subsidies, tax depreciation and write-off, guarantee, insurance, grub-staking, price ceilings, price floors, and the other 57 varieties of financial assistance that governments gladly give to aid the production of primary products in our time. Each province had gone through rebellion or near-rebellion to establish responsible government and was suffering the consequences. They were free, bled white by the past patronage of the family compacts, and had credit risks with nowhere to peddle their securities to raise money wherewith to provide aids and services to increase the gross provincial product. Several of the American states had defaulted on their securities which had been sold in England. In 1843, we find the Scottish essayist Sydney Smith publicly petitioning Congress to repay him the money he had invested in so wealthy a state as Pennsylvania which had taken his money, built roads and canals with it for the public good, and then defaulted on the debt. To the British investor, the pleas of the poorer governments in his own British Colonies to invest in their public purposes rang a bell on an off-key note. For the first—but not the only time—the Yankee had proved himself smarter in the money mart than his Canadian cousin.

The governments of the colonies had only two resources—vast lands, seas and forests ready for the development of all types of primary products; and people, not enough people but enough for a start.

(9) The economic climate. In 1847 a sharp economic depression settled over the colonies of British North America and lasted for several years. The effects were aggravated by the loss of the imperial preference on grain and timber which was withdrawn by the British government on the repeal of the British corn laws.

(10) Banks. The banks in the colonies had followed the English system of establishing themselves—and the money market they created—in the towns and cities. They awaited the stimulus that would spur them to create a banking system that is uniquely Canadian: and which was born of and adapted to the needs and the growth of a land such as Canada. But in the 1850's, the banks were proceeding very cautiously in regard to the extension of credit and the opening of branches. At this time, however, there was a sharp growth in agriculture and commercial settlements and a consequent demand by local entrepreneurs for local bank service to extend credit to them for risk capital in local development. The government, too, decided to intervene in the banking problem to encourage banks to establish branches. As a result, the government of the province of Canada legislated to enact a banking law that was applicable to all banks. And then, to quote Jamieson's *Chartered Banking in Canada*, 1953, at page 11:

An event of more than ordinary significance was the passing of an act in 1859 entitled 'an act granting additional facilities in commercial transactions'. It was the first step towards what are known as the 'pledge' or 'section 88' provisions of the present Bank Act. The extent to which these provisions have assisted agriculture, industry and commerce in producing, manufacturing and marketing the various products of the country is one of the most outstanding of the distinctive features of Canadian banking. It is worth noting that the principal aim of the legislation was not to make things easier for the banks but to provide for a need felt by the business community. Parliamentary records show, too, that the same motive was behind subsequent steps in the development of this feature of the Canadian banking system.

In 1861 the act was amended so that the principle and the main provisions of sections 86 and 88 of today's Bank Act were incorporated in the Canadian banking system where they have since remained.

The effect was to merge the primary producer, the processor and the banker into one effective productive unit and minimize the necessity for an outside investor. In large part, the primary producer replaced him. It was a self-starting economy. The producer produced and turned his product over to the processor who obtained credit from the bank for his processing necessities on the security of the unpaid for primary product. In return, the producer got a market for surplus production and cash above his bare needs, the processor got profits and capital for expansion, and the bank got a good return on its investment. In the process, Canada was developed. Nobody took much of a risk. If the processor went bankrupt, he was protected from his creditors and could start again; the bank had its blanket security; and the producer lost only the surplus above his living needs on what he produced from his mixed operation. The man who stood to loose most was the processor's factory hand who had no savings to fall back on in the event of the processor's bankruptcy. So, by common consent, he was protected against the operation of section 88 by a prior lien on the insolvent processor's assets to the extent of three months' wages.

Mr. Chairman and members of the committee, I pay tribute to the contribution that section 88 has made to the development of Canada. Let us look at Canada in 1963 in the light of the purpose of the legislature of the province of Canada of 1861 when it hopefully enacted section 88 "to assist agriculture, industry and commerce in producing, manufacturing and marketing the various products of the country."

(1) We have large one-crop farms and other forms of one-product primary production on a scale undreamed of by our 1861 predecessors in government;

(2) We have large domestic markets that are concentrated in cities of millions of people and other large urban areas;

(3) We are one of the largest exporting nations of primary products—if not the largest—in the world.

(4) For our population, we have one of the highest gross national products and standards of living in the world;

(5) We are among the leaders of the world in our highly developed land, water, rail and air freight facilities: we have grain elevators, warehouse facilities, refrigerated transport, and all the necessities incidental to a great freight transportation system;

We have the most modern of mass processing plants of every kind and specialized food processing skills and technologies;

(7) We have one of the strongest—if not the strongest—banking systems in the world with branches available to Canadians in every corner of the world;

(8) And, politically, we are a nation; with a strong central government—and I do not mean this in a partizan sense—that is respected among the nations of the world.

Yes, Mr. Chairman, section 88 has done its bit.

But, Mr. Chairman, today we have a public opinion that the public interest is best served if private enterprise that operates in the public interest is protected against fortuitous disasters not the fault of the private enterpriser. More and more this public opinion is expressed in the statutes of the parliament of Canada.

I would like to say at this time that I may not be able to recognize some of these words but I do recognize the unfairness of section 88.

It expresses the Canadian credo—the maximum freedom of private enterprise with the minimum of unforeseeable private risk. Some of these statutes in which the public protects the private enterpriser by way of guarantee or

insurance (often through the medium of the credit facilities of the banking system) are listed here: The Farm Improvement Loans Act, R.S. c. 110; The Veterans' Business and Professional Loans Act, R.S., c. 278; The Prairie Grain Producers's Interim Financing Act, 1951 Acts, c. 20; The Home Improvement Guarantee Act, 1937, c. 11 (now National Housing Act).

The Canadian Wheat Board Act, R.S., c. 44; The Export Credits Insurance Act, R.S., c. 105; Prairie Farm Assistance Act, R.S., c. 213; Farm Credit Act, 1959 Acts, c. 43; Fisheries Improvement Loans Act, 1955 Acts, c. 46; Prairie Grain Loans Act, 1960 Acts, c. 1; Small Businesses Loans Act, 1960-61 Acts, c. 5; Fishermen's Indemnity Plan; Marine and Aviation War Risks Act, R.S., c. 328; (This does not refer to Canadian wars but is passed "For the purpose of securing that ships and aircraft are not laid up and that commerce is not interrupted by reason of lack of insurance facilities . . ." The Emergency Gold Mining Assistance Act, R.S., c. 95.

The government guarantees all these things.

There are other statutes of this nature as well as the provisions in our taxing statutes which permit depreciation write-off and exemption of resources exploration expenses, which are familiar to most of us. I do not mention the welfare statutes under which the government guarantees, in some measure, against the risks of living.

In other words, the government today is either assuming or underwriting, in whole or in part, that risk (the disaster without fault) which, in a younger Canada, the primary producer assumed.

In the light of this politico-economic philosophy, section 88—insofar as it affects primary producers on a processor's bankruptcy—is colonial thinking.

Mr. Chairman, I respectfully submit:

(1) Today, a large-scale one-crop primary producer can be financially crippled for years under section 88. This, as explained, was not the intention of the 1861 legislature of the province of Canada, as witness its protection of the processor's employees; I might mention here that with the increasing replacement of the family unit in primary production by hired employees, these employees are not protected as to any back wages owing them by a primary producer on a processor's bankruptcy.

(2) Under our political thinking, a primary producer is in the same case and is entitled to at least as much protection as is an exporter of processed or other goods under the Exports Credits Insurance Act;

I think you all understand that act.

(3) The purpose of section 88 is spent. The bankers' own textbook—Jamieson's *Chartered Banking in Canada* which is required reading in the fellows' course sponsored by the Canadian Bankers' Association and conducted by Queen's University—states that the principal aim of section 88 is not to make things easier for the banks but to provide for a need felt by the business community. Mr. Chairman and members of the committee, it is for the bankers to prove that the need of the business community in 1963 is served by the ruin of a primary producer.

I might mention, in a very broad way, certain remedies that can be considered:

(1) The primary producer might insure privately against the bankruptcy of the processor. For the public, this is the most expensive method because the cost of the tremendous over-insurance to guard against the occasional bankruptcy would be passed on to the consumer. Again, it would not protect the primary producer who is financially unable to insure; and finally, unless a general average rate were struck on the basis of statistics, the insurance com-

panies would not obtain an accurate assessment of the risk if insurance were only taken in doubtful cases. Neither the processor nor his banker would reveal the financial infirmities of the processor;

(2) The primary producer might be protected by some method along the lines of Bill C-5. This would throw the risk on the banks who might withdraw on a risk venture and so injure the local primary producer and the local processor to the harm of the public interest in production. In such cases, however, the industrial development bank might, as a matter of government policy, take up the slack and finance the processor;

(3) The government might indemnify either the banks or the primary producer against risk on a guarantee or insurance basis. This would involve a study of past experience of the effect of section 88 upon primary producers and the probabilities of the processor's bankruptcy. Statistics—or "mortality tables"—for the calculations to devise a plan can be obtained from the superintendent of bankruptcy, the inspector of banks, the bureau of statistics, and other governmental agencies, as well as from the banks themselves. This method takes the burden of undeserved risk off the primary producer—does not place it on the banks—and is at one with the Canadian credo above set out: the preservation of private enterprise directed to a public good (in this case, a joint enterprise by the primary producer, the processor and the bank) by means of public indemnification against private loss.

The CHAIRMAN: Thank you, Mr. Whelan. As previously agreed I think we will now continue with the questioning of the representatives of the Canadian Bankers' Association, or would it be the wish of the committee to hear all the briefs before we continue with the questioning?

Mr. THOMAS: That would by my suggestion, Mr. Chairman.

The CHAIRMAN: I have one other question on an unrelated subject, that is the question of accommodation. Miss Ballantine informs me that we can have no room in the west block this morning owing to the federal-provincial conference. However, there will be a room available this afternoon. Would you like me to make arrangements so that we may sit there this afternoon? Although this room is closer to the house, yet the committee is master of its own destiny.

Mr. GRAY: Mr. Chairman, I understood that because of the meeting of the provincial conference it was unlikely that any matter would come up that would cause embarrassment to certain ministers who might be occupied elsewhere and who might not at that time be present in the house. Therefore, it is unlikely that we would be called upon to rush up there to do our duty.

Mr. AIKEN: There might not be a quorum if half of the members are at the provincial conference and the rest are down here.

The CHAIRMAN: Would you like me to make arrangements to meet this afternoon in the west block, or would you prefer to remain here in view of the remarks that were made? We will instruct the clerk of the committee to make arrangements for us to sit in room 371.

Mr. NESBITT: 371, unless I am mistaken, is not air-conditioned.

The CHAIRMAN: I think every room in the west block is air-conditioned. In any case it is apparently the only one available.

Mr. OLSON: I respectfully suggest it is no more comfortable than this room. I spent a day in there yesterday.

The CHAIRMAN: Shall we forgo the pleasures of moving?

Mr. AIKEN: Let us stay here.

M. CÔTÉ (*Chicoutimi*): Monsieur le président, est-ce qu'on pourrait avoir la traduction en français du mémoire que vient de nous lire M. Whelan?

Le PRÉSIDENT: M. Whelan ne l'a pas produit en français.

M. CÔTÉ (*Chicoutimi*): C'est un document très intéressant.

Le PRÉSIDENT: On pourrait demander au secrétariat de le traduire et, lorsqu'il sera disponible, d'en transmettre des copies. Mr. Whelan, did you prepare French copies?

Mr. WHELAN: Not having the facilities of the Canadian Bankers' Association at my fingertips or any such large organization, I was unable to get it translated at this time in French, but I will do so as soon as possible.

The CHAIRMAN: Mr. Côté has asked for a translated copy, and we will instruct the clerk to see that it is produced for the record. I understand this meets with the approval of the committee. Mr. Whelan will try to make equal facilities available.

Is Mr. Ken Standing of the Ontario soya-bean growers marketing board here? I wonder, Mr. Standing, if you could come forward and present your brief. Would it be the wish of the committee that copies of Mr. Standing's brief also be translated into French? It is agreed.

Mr. K. A. STANDING (*Secretary-Manager, Ontario Soya-Bean Growers Marketing Board*): Mr. Chairman, members of the committee, I was asked by the member sponsoring this amendment to appear before the committee. Since 1949 we had one of these growers organizations organized, which was referred to this morning, in the name of the Ontario soya-bean growers marketing board, and my brief is sponsored by them. I would not want to leave any erroneous impressions, and one of my other sponsors may not appreciate his name being in here, but the Ontario wheat producers marketing board were also organized, although nine years later than the soya-bean board. They were also involved in the problems of grain marketing through people who had advanced money. When they went bankrupt they paid the bank, not the producer. We have had a great deal of experience since 1949 as a growers organization because we took it upon ourselves to represent the growers, in the case of the soya-beans for instance. In the first three bankruptcies I can remember we represented some 40,000 producers of soya-beans in trying to establish their rights to a claim for the return of the product, rather than the common creditor as the present Bankruptcy Act sets them out to be.

I prepared this review of the situation based mainly on one particular case which did get into the courts for a hearing and on which there is established evidence and on which we think a real precedent has been set in settling the estate. In the province of Ontario there are some 30,000 farmers who produce grains of various kinds: wheat, corn, soya-beans, oats and barley being the major ones. These producers sell through something like 600 country elevators, which are more or less financed in order to be in a position to receive the farmers' grain and move it into market.

Under the marketing plans that are in existence here in which soya-beans and wheat are included, we have certain privileges referred to this morning, and also the right to establish financial responsibility. This is a provincial matter, but the province of Ontario has not yet found a way to establish financial responsibility. People who buy products from farmers and others have recently cast this responsibility on us producer organizations to see if we know a way.

According to correspondence we have had with various institutions, financial and otherwise, we are not able to rely on any known source for proof of financial responsibility among these people. We have even gone to the extent of establishing among our producers, at their own expense, a type of unsatisfied judgment fund. I have been prevailed upon to undertake this. I do not think it is fair to the producer in establishing a much better credit rating for people who go to the bank to borrow money.

I shall follow my brief now closely. The brief says that the proposed amendments to the Bankruptcy Act suggested by Bill C-5 are essential to grain producers in eastern Canada. The very next clause hit me suddenly when I was preparing the material. I did not think of it at first, but I suddenly realized that we are regarded as grain producers and that everyone in Ottawa will immediately think of us as being "western Canada", and that the country elevators are all bonded and they all come under the Canada Grain Act, and that there is real protection for the producers. So I set out this paragraph.

At the very outset it is necessary to point out that the Canadian wheat board does not regulate the handling or sale of grains in eastern Canada. These (eastern Canada) grains are marketed through private and co-operative country elevators who receive the grain for outright purchase, or for storage followed by purchase.

When grains are purchased, funds for payment to producers are made available under section 88 of the Bank Act.

When grains are received for storage they are mingled with grains of the same type and grade and are said to lose their identity.

This is our key problem.

This loss of identity precludes a primary producer from recovering his stored grain in the case of a bankruptcy as was the ruling of Judge J. D. McCallum in the case of the bankruptcy of McClean Grain Limited, St. Thomas, Ontario, where he ruled that:—"I am bound by the privy council decision in the South Australia case which has been followed for many years. All the evidence herein points to a sale and not a bailment".

I will make further reference to this.

In this particular case some 67 farmers appeared before his Honour Judge McCallum to lay claim to the grain which they had delivered to the bankrupt and for which they had either held storage tickets or had not yet received payment.

These producers at the suggestion of our solicitors did not file claims as creditors in the ordinary sense, in order to make a case for the return of produce which they had delivered. (There are in all, 110 claimants claiming in value \$184,000.00 worth of grain). In fact there was a great deal of pressure put on them to make claims as creditors. And in the findings of the judge it states that a certain number of people did file as common creditors, which disallowed them from any claim otherwise. Some of our producers were so irate they suggested there must be collusion here, because we put on a very strong campaign to stop these people from making claims as common creditors.

There was \$186,000 at stake, and our board could have been in great difficulty if this had gone against the people who had been filing as common creditors in the ordinary sense in sufficient time.

Judge McCallum's ruling in this case was based on the case of South Australian Insurance Company vs Randall 1869 and resulted in appeals being launched by the farmers jointly and several others who claimed that their grain should be returned to them. In other words, after Judge McCallum's decision was brought down, we proceeded to appeal.

During the proceedings in this case, the farmer creditors registered a claim that the Bank did not have adequate security under Section 88 of the Bank Act, but the Bank did have sufficient other security that its claims against the estate were met without attaching the grain in the estate, and the question of the Bank having adequate security under Section 88 was never disputed. I should have put there "unfortunately", I think we would probably have run out of money.

The appellants to Judge McCallum's ruling eventually requested a special distribution of the assets of the company by way of setting apart and giving

preference to the primary producers. To the best of my knowledge this request was granted by the Bankruptcy Court and settlement of the estate on this basis is pending.

We felt that we had made a sufficiently strong case, if this grain was not part of the estate and was not owned by the estate, and if we were persuasive enough to have the solicitors for the various parties agree to the different distribution. The preference was that the producers who had grain who could prove that they had delivered grain to the elevator for which they had not been paid, were really in effect holders of a bailment. In other words, their grain was in store and it was identifiable. But I will point out to you later that it was not. I talked to our solicitor yesterday and he said that he had been paid in this estate. The bankruptcy occurred in May of 1957, and the solicitor was paid this week for his part in the hearing, up to this bankruptcy of the producers, and that we are supposed to be paid this month.

Several grain dealers bankruptcies have occurred since the inauguration of the Ontario soya-bean growers' marketing board in 1949.

In most of these instances the dealer operated under section 88 of the Bank Act and the lending bank took as security grain held by the dealer but not necessarily paid for, at least this must be assumed, since the bank loan under section 88 could not be satisfied by the sale of grain for which primary producers had received full payment. Grain which had only been partially paid for was also sold to satisfy the loan. Our board made audits of all of these bankruptcies.

In one of these cases, the primary producers received no remuneration, the Banks security under section 88 was satisfied by the sale of a first mortgage on the property other than grain. It takes security besides grain. In no case has the primary producer been able to recover his grain even though he had just delivered it the day that assignment was made.

In other words, there was no question about it being there and that it might have been identifiable.

In summation, it may be well to look at present law as it applies to ownership of grain.

At common law, grain remains as part of real property on which it is grown until it is mixed and can no longer be distinguished as the grain grown in that particular land.

MR. NESBITT: Mr. Chairman, on a point of clarification which I think would be helpful, I was wondering about this last statement which starts with the words: "At common law, grain remains as part of real property on which it is grown until it is mixed and can no longer be distinguished as the grain grown on that particular land." I wonder if that is not a little ambiguous. I think those who happen to be members of the legal profession here will probably agree that there is a slight ambiguity here. It means that after it is cut it becomes a chattel, and while it is still identifiable in bags or something, it can be followed. But once it is mixed, it ceases to be identifiable. I thought I would clarify the point at this time. I am sorry to have interrupted.

MR. STANDING: It appears that, so long as the grain belonging to a particular owner is kept segregated, he may store it with a bailee and preserve his title to it. However, this whole position changes at common law as soon as this grain is mixed. It is no longer part of the realty and it can no longer be subject of bailment.

In decision in *South Australian Insurance Company vs Randall*, 1869, 3 P.C.—Appeals, the headnote at page 101 reads as follows:

A bailment on trust implies that there is reserved to the bailor the right to claim redelivery of the property deposited in bailment. Wherever there is a delivery of property on a contract or an equivalent in

money or some other commodity, and not for the return of the identical subject matter in its original or an altered form, there is a transfer of property for value—it is a sale and not a bailment.

If the grain were like the Cadillac car and had a serial number on it, this number could be recorded; but this is not the case.

Over 400 dealers in grain in the province of Ontario receive grain from primary producers in order to condition and sell said grain in the normal grain trade channels. In order to finance the grain in the interim between purchase and sale, dealers borrow money under section 88 of the Bank Act, to pay producers. If producers are not paid, then attachment by the bank of the said grain is not necessary. This is the very strongest point, I think, in the brief. In the case of bankruptcy, the bank has no claim on such grain and then the matter in dispute is the identification of each primary producers' grain, which is not possible because it has been mixed or mingled with other similar grain.

The fact is that the loan under section 88 is supposed to be made on something owned by the dealer or bankrupt. If this grain was a bailment, it would not be owned by the bankrupt; there would be a prior claim.

Since 1954 there have been five grain dealers who have been forced into dissolution involving over 200 primary producers all of whom became common creditors, although in every instance grain, either in store or unsold, was the major portion if not all of the claims of the producers.

As far as we can ascertain in each of these cases, the companies in question folded on the bank's refusing to grant further credit under section 88 and the inability of the dealer to pay off the bank loan, even though it was made on the strength of grain owned by the dealer.

All of which is respectfully submitted.

The CHAIRMAN: Thank you, Mr. Standing. I wonder if the other primary producing board representative is here yet? Apparently not. In that case we will continue with our questioning of Mr. Paton and his associates from The Canadian Bankers' Association. In this connection, might I say that Mr. Gray will continue with his line of questioning. Then, the names I have of those who follow Mr. Gray are Mr. Nesbitt, Mr. Otto, Mr. Klein and Mr. Basford. I would suggest that any other members who desire to address questions to any of the witnesses should catch my eye, and the secretary or myself will note their names. Thank you very much, Mr. Standing.

Mr. GRAY: Mr. Paton, I notice in your brief you refer to the fact that there is already some priority for wages existing in the bankruptcy legislation and also in section 88 itself. I would also gather that there are other priorities of distribution under the Bankruptcy Act for various indebtedness of a bankrupt to municipalities, governments and so on. Has the existence of these priorities cut down the operation of lending under section 88?

Mr. PATON: No. I would say the answer to that would be no. They have been in existence with section 88 all the way through, and they have had no limiting effect on the amounts advanced.

Mr. GRAY: Are they not widespread throughout Canada in the type of thing proposed by this bill?

Mr. PATON: There would not be a charge against the relative inventory to the same extent that would be envisaged if this bill passed and spread in all the ramifications with which we are greatly concerned. Bill C-5 as presently constituted, and if it were passed, would expand very largely in application, and then it would become a real detriment.

Mr. GRAY: I was very interested in one of your answers to the effect that each loan application is considered separately and, I assume, on its individual merits, and so on.

Mr. PATON: Yes.

Mr. GRAY: If that is the case, why would there be a blanketing? Would you not be a party to what you have just elucidated?

Mr. PATON: Our submission was prepared rather precipitately and perhaps our use of language was not the best. By "blanket" I would think we meant substantial.

Mr. GRAY: Is that not about the same thing?

Mr. PATON: I think I should go back to my original statement; that is, we consider every loan application individually. We submitted a brief to the Royal Commission on Banking and Finance in which we covered section 88, and the statistics as of November, 1961, showed that the banks as a group had some 34,000 section 88 loans out, of which 27,000 were direct to farmers.

Mr. GRAY: How many in which the processor was the bankrupt?

Mr. PATON: Very, very few in number.

Mr. GRAY: Are you suggesting you would prejudice possible loan applications to processors because of the very few processors who go bankrupt?

Mr. PATON: What I am trying to stress is that our application of section 88 is widespread throughout the country, coast to coast in all industries and in each case is related specifically to the application made and the worth of the individual whether he be a farmer, wholesaler, dealer or whatever. We do not apply a blanket approach.

Mr. GRAY: What would happen if this bill went through?

Mr. PATON: The eligibility for getting these loans under section 88 would be severely affected so you would have an over-all limitation of credit in individual cases multiplied by a very large number.

Mr. GRAY: Would you look at the fact that somebody had a large number of employees who might have a claim for wages under the bankruptcy legislation in deciding whether or not you would give credit under section 88?

Mr. PATON: This is not part of the consideration we give to the individual loan. We know that this preference is there when we make the loan. If we have to realize under our section 88 security, we recognize this will take priority to our own claim.

Mr. GRAY: I gather from an answer to a previous question that this has not cut down on your loans?

Mr. PATON: That is right. This is not new; it has been part and parcel of section 88 certainly for the time I have been banking.

Mr. GRAY: If this bill went through, could you not study your priority? Would it affect the volume of your loans?

Mr. PATON: Well, at the risk of being repetitive, it is doubtful if we could. Our concern is the ramifications of this bill; in other words, how far will it spread?

Mr. GRAY: I have one final question; you say your total volume alone is \$1 billion.

Mr. PATON: This is from statistical data.

Mr. GRAY: What interest has the banking industry in Canada earned from that?

Mr. PATON: Not exceeding 6 per cent; it varies according to the interest rate charged. It might be $5\frac{1}{2}$ per cent or $5\frac{3}{4}$ per cent. However, there are many loans government-sponsored under Section 88, the specific legislation which Mr. Whelan mentioned.

Mr. GRAY: Well, could you estimate an amount?

Mr. PATON: You mean the interest rate?

Mr. GRAY: I wanted you to estimate the total income—and I realize you are unable to give an exact figure.

Mr. PATON: Well, it would average less than 6 per cent on these specific loans. Six per cent would be the maximum, so that would be the maximum return.

Mr. GRAY: \$50 million or \$60 million?

Mr. PATON: Well, I am not very good at figures.

Mr. GRAY: Perhaps Mr. Whelan can compute it for you.

Mr. PATON: Now, mind you, that is the gross return.

Mr. GRAY: Actually, it is a very considerable amount.

Mr. PATON: That is the gross total.

Mr. GRAY: And you have small losses.

Mr. PATON: My colleagues advise me this would be \$6 million gross income for all the banks in Canada.

Mr. KLEIN: Is that under all provisions of Section 88 or just processing?

Mr. PATON: All provisions of Section 88.

Mr. GRAY: But you are limited, are you not, under the present law as to the nature of loans made, and there are only certain kinds made under the banking legislation?

Mr. PATON: I would rather put it the reverse way; there are certain types of loans we are precluded from making.

Mr. GRAY: But Section 88 loans make up an important part of your business.

Mr. PATON: That \$1 billion figure represents 18 per cent of the total loans outstanding.

Mr. GRAY: Are you suggesting in your brief you would substantially reduce the income from this important type of loan because of what you have said is the very small risk of loss from this type of added protection?

Mr. PATON: I will answer by saying that in an expanding economy we always have found very satisfactory areas in which to lend our money and we probably would get an alternative source if we found it was impossible to get the protection that we required under Section 88, remembering at all times that we are trustees of our depositors' money and when we lend money we have to get it back to pay our depositors. This is our function.

Mr. GRAY: You have not run into much of a problem so far under Section 88—

Mr. MACALUSO: None at all.

Mr. GRAY: —in connection with processors or producers?

Mr. PATON: That is correct.

Mr. GRAY: Would you have had greater losses if you did not have priority or, to put it another way, if this type of legislation was in effect, in view of your own statement in the brief as to the small risk of loss?

Mr. PATON: We would not be so far extended in this type of financing; in other words, this \$1 billion figure would not be of that size. To some extent, we are dealing in the abstract and cannot give you any figures, but the risk we would be prepared to take would be less.

Mr. GRAY: My Financial expert, Mr. Whelan, keeps telling me the amount is \$60 million.

Mr. WHELAN: If \$6 million is the amount, I would like to borrow some at that rate.

Mr. CLARK: I have spoken to Mr. Paton to see if we could correct that figure.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Perhaps that is the trouble with the banks—

The CHAIRMAN: It just shows that they are human as well.

M. CÔTÉ (*Chicoutimi*): Est-ce que, réellement, les banquiers prennent beaucoup de risques?

Le PRÉSIDENT: Je regrette, mais M. Gray a la parole. Si vous voulez bien nous laisser votre nom, on vous appellera lorsque votre tour sera venu. Have you finished your line of questioning Mr. Gray?

Mr. GRAY: I hope the suggestion as to what might happen if a bill of this type goes through is not couched in the form of a threat by the banking industry?

Mr. PATON: I am sorry but I did not get your name?

Mr. GRAY: I knew you would ask me; Gray.

Mr. PATON: I assure you that there is no thought of a threat. As a matter of fact, we are concerned with the primary producers because of the 27,000 odd loans, and I would say we certainly would be only too willing to co-operate as much as possible.

Mr. GRAY: The phraseology used in paragraph No. 3 led me to ask that question.

Mr. OLSON: Mr. Chairman, we agreed sometime ago that we would discuss the question of adjournment at a quarter to eleven and it is now past that time.

The CHAIRMAN: Have you finished, Mr. Gray?

Mr. GRAY: I just wanted to suggest to the witness that the phraseology used in paragraph 3 unfortunately led me to the suspicion, which I hope is wrong, that there may be some implied threat from the banking industry?

Mr. PATON: That is something that is farthest from our minds, I can assure you.

Mr. OLSON: This will be reassuring to the various processors and organizations concerned.

Mr. PATON: I think my colleague, Mr. Clark, would like to say a word at this time.

Mr. CLARK: Mr. Gray, in respect of what you say about paragraph No. 3 and the question of a threat, this is a question rather of presenting to you the fact that there is need on behalf of any banker to protect his loan, particularly if he is using the assets of depositors in his lending operation. And, in connection with the volume of loans being reduced to small processors and to processors generally, I am sure you would not advocate it or would anyone that a banker should become loose in his credit extensions. That, I take it, is accepted as a fact.

What would happen here would be this, I think: if Section 88 were not available other forms of security designed to do the same thing might well be developed because, after all, the general intention of the legislation was for the benefit of the community as a whole and not for the banker. If you take this system and dilute it, then I think it is fair to say that some other means would have to be found for protecting the money so lent. I just wanted to add that point. This is not a threat at all but a question of extension of credit.

The CHAIRMAN: Gentlemen, as was pointed out to Mr. Olson, we decided to discuss whether we should adjourn at 10.45 until after Orders of the Day or continue to sit until perhaps 12 o'clock. It is my feeling that we will require at least another hour or two to complete our considerations of this bill. With your permission I would suggest that in view of certain remarks made by

several members we continue our sitting until 12 o'clock or perhaps 1 o'clock in an attempt to complete our consideration without the necessity of meeting again this afternoon. I make this suggestion simply on the basis that we are handy to the House of Commons chamber and if the main bell rings we are all very quickly available.

The decision is, of course, up to the members of this committee, but I do remind you that we have permission from the house to sit while the house is in session.

Mr. NESBITT: Mr. Chairman, I should like to suggest that we have made good progress this morning. We have heard the briefs to be presented and have proceeded to some extent to ask questions in regard to those briefs. Mr. Gray has asked a number of very cogent questions, the answers to which have obviated the necessity of a number of other members asking similar questions.

I would suggest that perhaps we adjourn at this time until after Orders of the Day, which today probably will not take too long in view of the absence of a number of gentlemen—perhaps no more than three quarters of an hour—at which time we can return to this room and continue with our questioning. By following this procedure we can perhaps complete our questioning of the gentlemen from the bankers association, followed by our questioning of Mr. Whelan and our questioning of those gentlemen representing the other organizations.

Mr. OLSON: Mr. Chairman, I should like to suggest one other alternative procedure. Perhaps it would be more convenient to those gentlemen who have appeared before us this morning to adjourn now until after lunch. It is quite obvious that we are not going to be able to complete our considerations without the necessity of meeting again this afternoon. Perhaps rather than adjourning after Orders of the Day and then adjourning again for lunch it would be more convenient to adjourn now and meet again at 1 o'clock.

The CHAIRMAN: Gentlemen, we have now had three suggestions put forward. What is the general feeling of the members of this committee?

Mr. NESBITT: I would suggest that we adjourn until 1.30, following Mr. Olson's suggestion.

The CHAIRMAN: Is it agreed that we adjourn at this time until 1.30 this afternoon?

Mr. OLSON: Mr. Chairman, I should very much like to hear from these gentlemen who have come to this meeting today. It seems that we should accommodate their convenience as well as our own.

The CHAIRMAN: Mr. Paton, I wonder if you and your representatives could return this afternoon at 1.30 p.m.?

Mr. PATON: Yes.

The CHAIRMAN: Will that be inconvenient for you?

Mr. PATON: No. We have planned to spend the day here and have arranged for a flight out of Ottawa at 6 this evening.

Mr. AIKEN: I think most of us present have made similar arrangements.

The CHAIRMAN: Mr. Standing, would this be convenient to you?

Mr. STANDING: That would be convenient, Mr. Chairman.

Mr. MACALUSO: Mr. Chairman, it is my understanding that Mr. Whelan must leave and will not be available this afternoon.

Mr. NESBITT: We are able to ask Mr. Whelan questions at any time.

Mr. MOREAU: Mr. Chairman, perhaps we might extend an invitation to our guests to join us, at least in the gallery, during Orders of the Day.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think that would be very bad for the prestige of democracy, Mr. Chairman.

The CHAIRMAN: We will adjourn now until 1.30 this afternoon and will meet again in this room.

AFTERNOON SITTING

FRIDAY, July 26, 1963.

The CHAIRMAN: As there is a quorum present I will call the committee to order. We will continue where we left off this morning. Mr. Paton and his associates of The Canadian Bankers' Association will answer questions that the committee may wish to address to them. In this connection I have a list here which I propose to go by of those members who have indicated to me that they wish to address some questions to Mr. Paton. The first is Mr. Nesbitt. Those who wish to ask any questions please indicate their desire to me.

Mr. NESBITT: Mr. Chairman, there are two questions I would like to ask Mr. Paton. One of my questions I would also like to address to other witnesses. I presume that Mr. Paton is familiar with the terms of the provincial mechanics' lien act in Ontario and similar acts in other provinces. In the mechanics' lien act there are certain provisions for the protection of suppliers of material when buildings are being erected. This is very analogous to what is purported to be attained by the bill now before us. I was wondering if Mr. Paton could let us know whether when the mechanics' lien act was introduced in the various provinces The Canadian Bankers' Association raised any objections. This may not be a very fair question because he might not have this information at his fingertips. Secondly—while the terms of bill C-5 are of course not completely identical, there is yet a distinct analogy—does he think that under the circumstances, and in view of the fact that the mechanics' lien act is established and has been accepted for years, the terms of this bill are inconsistent and unreasonable in view of the general acceptance of the principles of the mechanics' lien act?

Mr. PATON: I think, Mr. Nesbitt, my answer to that would be that the mechanics' lien act relates to the value of the material; for instance the steel which is placed in a building under construction. The proposal here purports to give the primary producer preference on the finished goods or the processed goods as well as the raw material. This preference would be much wider than the similar preference under the mechanics' lien act. Here is a rough estimate. I would think the value of a finished product would include say 25 per cent of raw material. This is my answer off-the-cuff but it is something that I would like to delve into more closely. I am not fully familiar with the ramifications of the mechanics' lien act, but offhand I would say that there is a vast difference from that point of view.

Mr. NESBITT: I would agree there is a distinct difference in the administration, but the principle in the mechanics' lien act is that suppliers of materials to builders are given preference and protection; whereas in this case suppliers of raw materials to wholesalers or processors are likewise to be given some sort of preference or priority—although of course they are different.

That leads to my second question. I may anticipate your answer but I would like to ask this question of other witnesses as well. In the proposed terms of bill C-5 it says:

—products of agriculture, products of the forest, products of the quarry and mine, or products of the sea, lakes and rivers, with every accession thereto of labour, materials, art or science, in the possession of a wholesale purchaser or shipper of, or dealer in such products—

Now, what is your view, Mr. Paton, with respect to the ease of administering these proposed provisions of the legislation, either in the courts or indeed out of court, with respect to being able to distinguish where the products supplied end and where the processes applied thereto begin, and also to ascertain the amount of cost, inasmuch as various cost accounting systems, all being very accurate, are sometimes different? I suggest that there would be some difficulty in establishing, in a finished product such as a can of tomatoes for example, the extent of the value of the tomatoes in the can when one has added certain curing processes, the material in the cans and so on. I would like your general view on that.

Mr. PATON: I have not gone through this exercise myself, but I would expect it would be not too difficult to arrive at a pretty accurate division of the component parts of any finished can of goods or any thousand feet of lumber, or what have you. Speaking about canning in particular, there are a number of contributing suppliers to a can of goods: there is the label and the printing, there is the sugar, the supplier of the actual can, there is the overhead of the processor, his rent, and all other overhead charges, and there is the cost of the raw material; the amount of money he pays the grower. There would be relatively little difficulty, assuming that the processor has kept reasonable records, in establishing the cost of each contributing component of a finished product. I feel sure of that.

Mr. NESBITT: There is one more question I intended to ask. To a degree it was answered by Mr. Whelan when he was presenting his brief. I am speaking now of the number of bankruptcies in the last five years in Canada and the number of persons who might have been adversely affected by the existing laws. Have you any information on that?

Mr. PATON: We endeavoured to find out and we went back three years and inquired of the banks if they could provide us with this information. To the best of our knowledge these have been very few and far between. In several of the banks, including my own and Mr. Clark's, we have not been involved in any bankruptcies of canners. One of the banks was involved in one, which they mentioned, but this is the only one they could recall. In effect, we had specific advice of one only in the last three years. I think that same average would pertain to the last five years.

The CHAIRMAN: For the information of the committee I have before me the names of Messrs. Klein, Basford, Cameron, Thomas, Moreau and Cote.

Mr. OTTO: Mr. Paton, I would like to direct these questions to you in a practical sense rather than in a legal sense. In the first page of your brief, in the bottom paragraph you say:

Banks lend to the producers whom bill C-5 seek to protect on the security of potential returns from crops,—

From your practical experience is it the custom of the bank to lend to a producer or to the farmer on his crop and then, for the same branch of the bank, also to lend to the processor on the same crop, or would the bank then be rather leery about lending to the processor because of the bank loan to the farmer?

Mr. PATON: That situation could well pertain but it is not absolutely essential. In a competitive banking location, one bank may have a canning account and the other might have to give loans to farmers, but irrespective of which bank had which account the bank would have the double responsibility of financing it from seed to finished crop. It is then, out of the hands of the farmer, into the hands of the processor to process it to a finished article.

Mr. OTTO: My question is this: when you make a loan to a producer, will your bank wait until that loan is paid off before it will make a loan to the processors?

Mr. PATON: Not necessarily so, with this proviso, that every loan we make to a producer is based on his general worth and probably against the specific security of his crop as he puts it in. Likewise, our loan to the processor is based on his commensurate worth, and on the specific security of the purchased crop. In the majority of cases our loans to the processors are for the specific purpose of paying out, at least in part—and in many cases entirely—of the gross amount due to the primary producer who, in turn, pays back his bank advance. So in the normal operation of this business it is reasonable to say that the bulk of the funds we supply to the processors go toward (a) paying off a producer, and (b) paying for the cans and the other costs of the processor. Does that answer confuse the issue?

Mr. OTTO: No. I think what you are trying to say is that although you will lend to a processor and a producer, the effect is really to cover that crop, because you insist that the processor pay off the producer.

Mr. PATON: Not insist; if we approve a loan on a crop to a processor, we know his operation and we do not police the funds that we pay out to him. We operate under a normal bank loan basis in that we give him his line of credit and he issues his cheques and pays off his people. We at no time endeavour to police the distribution of those funds under normal banking operations and conditions.

Mr. OTTO: I was not quite clear as to Mr. Gray's question and I do not know if the answers were specific enough. Let me put it this way: in your banking business you are in the business of lending money. Do you anticipate certain losses in your business of lending money? In your planning, do you believe that you are taking a gamble in certain ways?

Mr. PATON: We know that we have to lend money with some risk, and we know that losses are inevitable.

Mr. OTTO: You bargain for a certain amount of losses?

Mr. PATON: It is the wording that bothers me. We know that we will have losses. It is not a question of anticipating; we know that we will have losses, because we know there is nothing sure in this world, and we are not lending against government of Canada bonds.

Mr. OTTO: That is why you are being paid interest, because you are gambling to a certain extent.

Mr. PATON: No, I would say that is part of the cost of our doing business, and it is included therein.

Mr. OTTO: You said also that although the producer has a certain amount of investment in these things, so also has the person who supplies the cans and who supplies the labels. I refer to page two, paragraph four, where you say:

—it would not be long before others who supply ingredients, packaging and other components to the finished product would, with justification, demand similar protection”.

From your knowledge of this business, do these manufacturers of cans, labels, glues, or whatever is required anticipate that they will have certain loss accounts in their financial set-ups?

Mr. PATON: I think so; that is a reasonable assumption.

Mr. OTTO: Do you think that a farmer, after he takes a gamble on the weather, the climate, the rain, expects that in his business operations he might lose, or does he consider that his gamble is over once he supplies the crops to the producer?

You understand there are marketing boards, and from your knowledge of those marketing boards, when they negotiate a price, do they anticipate that there will be a certain number of losses, or do they fail to consider losses,

and just go and negotiate a price on the crop? I am trying to get from you this; you have admitted that in your business you expect losses, and you bargain accordingly, by way of a certain amount. Would the canners, the producers, the papermakers, the label manufacturers also consider this when they set their prices? From your knowledge does the producer also consider this in his price, can you answer that?

Mr. PATON: I would suppose there are others around here who are a little closer to growing crops who could answer it. My own feeling—and I spent many years in prairie banking, and know exactly what the problems are for the farmer, who has to face all the vicissitudes of the weather, and whatever that word comprises—is that I would think that the farmer should, with his knowledge of life, and the knowledge that nothing is certain in this world—anticipate that at sometime or another, this could conceivably happen. I would think, further, that the farmer who is in business for himself, the same as many small retailers and many a man in the professions,—even a lawyer—must anticipate at some time his receivables will not be 100 per cent collectible, and that perhaps it would be expecting too much to exempt the farmer from that same type of thing.

Mr. OTTO: From what has been said here one gathers that the mechanics' lien law was originally meant to protect the labourer. For example, a labourer will take on a job; but once he has produced and supplied his labour, he does not gamble any further; in other words he expects to be paid and for that reason there are mechanics' lien laws and regulations made to protect him and to guarantee his wages to him.

I think this committee should be informed whether the farmer or the producer as such really expects to be protected? The farmer not only gambles on his crop and the weather, but he gambles when he goes into farming; and when he sets his prices, he is able to add an odd additional 10 per cent to the price in the event of bad debts. Can you tell us from your own information whether a marketing board that sets the price takes this into consideration?

Mr. PATON: I am afraid I cannot answer that question. I think probably a representative of the marketing board would be better able to answer it. I do not know from my own knowledge what they consider as included in the price that they set, or how they set the price. Perhaps one of the other representatives here could answer that better.

Mr. OTTO: From what you said there is no doubt that the bank bargains for possible losses; but the fellow who supplies the cans, and the manufacturer of these other items enter into the picture. However, we shall be getting information about the farmer later on. I have just one more question in connection with your statement.

Mr. PATON: We are a little upset about the word "bargaining".

Mr. OTTO: If I go into the practice of law I know that I will have a certain number of uncollectible accounts, so I set my fees accordingly. But if I were unable to do that—let us say that I am a doctor, and the government says you can charge only so much—then I would expect to have all my accounts paid. But we will leave that and get an answer later on. You said that banks consider themselves as trustees on behalf of their depositors?

Mr. PATON: I said that verbally this morning, yes sir.

Mr. OTTO: I would like to explore this further, because I think that the committee should consider this one problem in itself: if a bank is a trustee, are you saying that all profits made by a bank then are the property of the depositors, save and except for administrative costs?

Mr. PATON: May I withdraw the word "trustee". You said earlier that you were not going to take the legal meaning of various words used but that your questions would be along the practical side.

Mr. KLEIN: That is practical.

Mr. GRAY: I did not think there was that big a distinction.

Mr. PATON: Our primary responsibility is toward the depositor. He entrusts his money to us on a voluntary basis and we in turn lend it out. We have a responsibility to our shareholders, but our primary responsibility is to the depositor so that we will be in a position to return his money to him. That is what I meant by "trustee".

Mr. CLARK: A debtor and creditor relationship.

Mr. OTTO: You feel very, very responsible to your depositors.

Mr. PATON: I hope we always do.

Mr. OTTO: Is it not your position that you have said to your depositors, "You let us have your money and we will pay you a certain amount of interest; we will guarantee you do not lose". But, it is the bank that guarantees to the depositors that they will not lose.

Mr. PATON: We guarantee them—again the use of words is perhaps unfortunate—because we have a record in this country of having a very good banking system. We do not have a specific guarantee. There are passbooks, for example. The fact of security or the knowledge that they will get this money when they need it is considerable in Canada, and if you refer to that as a guarantee, that is the position.

Mr. OTTO: You use their money at your own discretion.

Mr. PATON: And pay them back in accordance with our discretion; yes.

Mr. OTTO: So you do not expect the law or any government agency to give your depositors the protection of a trust. You do not in actual fact guarantee the depositors by a legal responsibility as trustees.

Mr. PATON: Oh no. The use of the word "trustee" perhaps was unfortunate.

Mr. OTTO: In paragraph 7 on page 3 you state that "Bill C-5 seeks to protect a minority who would benefit from its provisions at the expense of undermining legislation which was designed with wisdom to facilitate production of every kind". Are you saying by this that there is a minority that must suffer for the benefit of everyone? In other words, if one farmer loses his crop and his livelihood, this is good because 1,700 or 1,800 other people have been able to make a living.

Mr. PATON: We are certainly not saying that.

Mr. OTTO: It is recognized that even one producer should be protected.

Mr. PATON: We recognize this in doing business, whether you be producer, canner, or buyer, or even a school teacher, you are not 100 per cent sure. Therefore, there has to be some element of risk in practically everything that is done in business. At the very best we must all work together to minimize that risk and eliminate it as far as possible; but to obtain 100 per cent perfection would be impossible.

Mr. OTTO: You have said a minority. If you had said a minority in the same class—but we have just discussed this and you said you were not sure whether the producer is in the same class as the processor or manufacturer because the processor or manufacturer assumes a certain risk. You said you were not sure, but we will have evidence at a later time to show that the producer is not in that class and does not expect that risk.

Mr. PATON: I would not want to give the impression that I think the producer has not or should not have any risk. I am not in a position to give

you an answer to the question whether a producer does consider that risk, because I am not a producer; I cannot tell you how the other fellow thinks, nor can I tell you how the marketing board thinks when they set a price. That is why I think it could best be obtained from other people.

Mr. OTTO: Under the federal provisions when your bank makes a loan to a processor and the bank follows the regular procedure of guarantors and so on, in the event that the bank takes advantage of section 88 and sells the goods is there any provision under your banking regulations by which that guarantor can be held liable to, say, the producer or any one of the claimants in this whole field? In other words, if the bank has made a seizure and paid off its account and holds a guarantor—

Mr. CLARK: If the bank realized on its security.

Mr. OTTO: —is there any machinery available for that guarantor to be the guarantor of the producer or those who take the loss?

Mr. PATON: Unless the guarantor specifically guarantees a producer, there is no machinery that would permit the bank, after it has obtained payment, to subrogate its rights in favour of the producer because there is a guarantor.

Mr. OTTO: Is it true in any of the banks that there is a hesitancy—a policy—by the bank to keep away from courts and suing the guarantor? Is that a policy followed by the banks?

Mr. PATON: Now, I will have to speak for my own bank, but I think there is a similar policy throughout. We lend our money to a company. Primarily we look for the return of our money from that company's assets. Our normal procedure would be to obtain as full recovery as possible from the company's assets, and then go to the guarantor. From a legal angle I might point out it is not incumbent upon the banks to do this, but this I would say would be the normal procedure to recover a loan about which we were in doubt.

Mr. OTTO: Let us suppose there is a bank loan to the processor of, say, \$50,000; the bank also has a guarantor. You are saying, then, that the bank would be much more likely to seize the goods, to liquidate its loan from the goods in inventory than leave the goods for distribution among the creditors and proceed against the guarantor.

Mr. PATON: In answer to Mr. Nesbitt's question I pointed out there was only one of these to our knowledge in the last three years among all the banks. I would not answer the question because the procedure has not come up; we have not been faced with it.

Mr. OTTO: You are speaking of a formal bankruptcy?

Mr. PATON: Yes.

Mr. OTTO: Are you also saying there have been no settlements before bankruptcy where producers have lost and there was no bankruptcy? For every bankruptcy there are 10 or 15 instances of settlement where producers have lost.

Mr. PATON: If you are speaking of the canning industry, I can quite definitely say I have no knowledge of the matter but I am ready to admit there have been such instances.

Mr. CLARK: If I might interject, Mr. Otto, the loan is made in the first instance to the operating entity to facilitate the carrying on of its business. The guarantee is just what the word implies, it guarantees the loan and repayment of the loan if things go wrong. That being so, in the event of difficulty the first step would be to call your loan, that is, the customer is called upon to repay the loan, which is the proper course. Then the bank would call upon the guarantor to take up the residue. I would say it is a

straight case of the borrower taking care of his own obligation to the maximum of his ability, and then when that is done the bank looks to other sources for recovery of the balance.

Mr. OTTO: What you are saying, in effect, is that the bank will follow this business procedure and liquidate the inventory regardless of others; whereas what I am saying is that the statement says this bill would have a tendency to decrease the number of loans. If there is a guarantor in every loan, and usually there is—

Mr. CLARK: I would not agree with that.

Mr. PATON: That is the very point. Rather seldom is there a guarantor of the substantial nature you have indicated, behind such loans. I was acting upon your hypothesis that there was one.

Mr. CLARK: May I say one more thing in the hope of contributing something to your first question. You asked if we might make loans to a processor at the same time that we are lending to a producer whose goods would be bought by that processor. To illustrate, there are occasions in which a bank makes a loan to a processor who makes an advance, in turn, on account to the producer to enable him to get his crop off or complete his fishing operation, logging, or whatever it is, prior to there being any goods in the hands of the processor at all. In other words, it is an advance position. I would like to emphasize that we do, in fact, lend at one and the same time to both of them.

Mr. OTTO: I have another question.

Mr. CARSON: Mr. Clark was not finished.

Mr. CLARK: I might say that one of the reasons processors get into trouble in connection with lumbering operations and so forth is that through no fault of the processor but rather by an act of God, bad weather and so on the producer is not able to deliver the goods he expected to provide for the advance made by the processor and that brings grief to the processor.

Mr. WHELAN: And they sue him too.

Mr. OTTO: I do not think you understand. Let us take a farmer who has gone to the bank and has informed them he has a \$75,000 crop of tomatoes and wants a loan in the amount of \$50,000. The bank says, "yes, here you are". Then the processor comes in and says, "I am going to get this crop in, in fact, I am getting it in; I have the crop in now, please give me \$50,000 on it". Will you say, "yes, here is your \$50,000" or will you say, "here is your \$50,000 provided that you pay the former's \$50,000"?

Mr. CLARK: We do not follow in detail what a processor does in paying out money we lend him. But, it is true, in a community where there is say only one bank and only one canning company, we would certainly lend to the canning company at the same time that we are lending money to the producer and in that way work to the satisfaction of both. We do not say, "no, we won't give you a loan because we lent money to others".

Mr. OTTO: Thank you very much.

Mr. PATON: If I could revert to one question regarding the risk the grower takes, there is a form of financing of which you possibly are not aware. In some situations we have a line of credit to processors which is supported in part by notes of various amounts from growers who are responsible, and anxious to keep the canning company in operation and are prepared to go on the note themselves to carry that operation through. That is one way in which they work together. These people are willing to sign accommodation notes for which they receive no value, and they are taking a risk. We work very closely with them.

The CHAIRMAN: Do you have a question, Mr. Klein?

Mr. KLEIN: I believe you said in your verbal representations this morning that Section 88 contributed in part to the high level of our economy.

Mr. PATON: Yes.

Mr. KLEIN: Would you tell me whether the United States of America has legislation similar to what we have under Section 88?

Mr. PATON: Under Section 88, no. However, they do have a form of banking legislation or banking security which is well developed in the United States, and which is known as warehousing and field warehousing.

Mr. KLEIN: We have that as well under Section 86?

Mr. PATON: Yes, under Section 86 but they have developed it to a higher degree, particularly in respect of the field warehousing, where lending companies or banks put a man into the operation which they are financing. They put this man right in the warehouse or shop and segregate certain finished inventory under lock and key, and that inventory can only be disbursed upon the authority of this field warehouseman.

Mr. KLEIN: Does it belong to the bank if that company goes into bankruptcy?

Mr. PATON: Yes. This security belongs to the bank during the financing. That is a costly way of financing because there is an intermediary in the picture and he has to be paid. Section 88 security is not comparable to it and it is less costly.

Mr. KLEIN: Would that apply to the primary producers in the United States as it does here?

Mr. PATON: I hardly see where it could. Where the seed goes into the ground and comes up in the fall there is no security they take down there, to my knowledge, on that crop at that stage, whereas we take it on the growing crop.

Mr. KLEIN: Would you say the elimination of section 88 would make banks more competitive?

Mr. PATON: No, I do not think it is possible for banks to become more competitive.

Mr. KLEIN: Are banks competitive today?

Mr. PATON: They are, sir, most competitive.

Mr. KLEIN: I beg your pardon?

Mr. PATON: I am just trying to think of a word that is not too strong.

Mr. OTTO: You may use strong words.

Mr. PATON: They are completely competitive in every phase and form.

Mr. KLEIN: Do you mean that I could go shopping and that one bank would tell me I could get so much credit and another could do better?

Mr. PATON: You could do so. There is nothing to prevent you from doing that.

Mr. KLEIN: Do banks follow that kind of procedure?

Mr. PATON: Yes, this is how banks operate and I would not wish you to think otherwise. This involves a matter of banking judgment. If you came to me I might say that I could give you \$200,000 but you might talk Mr. Clark into giving you \$300,000. You might probably be foolish to go to Mr. Clark; nevertheless, this is a matter of judgment.

Mr. CLAKE: If you were my client I would hope that you spoke to me, sir, before you spoke to Mr. Paton.

Mr. KLEIN: Could you tell me generally, particularly in respect of these industries, at what stage the bank would insist upon section 88? At what stage in your dealings with a client would you insist on section 88? You do not ask for the application of section 88 immediately the client comes in for the first time in respect of every industry, do you?

Mr. PATON: We will probably read through section 88 of the act before this committee solves this particular problem, but section 88 very clearly indicates that which a bank lends against. We cannot lend against shoes in a retailer's store, for example.

Mr. KLEIN: I am not asking the questions in that context. I am asking the question in respect of industries in regard to which section 88 could be applied. At what stage do you apply section 88 in connection with your own clients?

Mr. PATON: It is applied at the initiation of the account.

Mr. KLEIN: In every case is that so?

Mr. PATON: It is so in every case where we feel it is required to justify the line of credit requested. For example, all kinds of companies are not under section 88.

Mr. KLEIN: I am speaking in general terms.

Mr. PATON: As a general policy, section 88 is applied at the outset of the account in setting up the line of credit requested if we feel this security is necessary. If the stated position of the company does not warrant lending the credit requested without that security, then it is applied at the outset.

Mr. KLEIN: Would you exercise greater control over your clients as a result of having obtained the application of section 88?

Mr. PATON: Yes, sir. We receive at regular intervals, perhaps monthly, statements of the inventory carried, which is set forth on a specific form, and I think all banks use the same form, showing the inventory raw, in process and finished, as well as charges due against it such as unpaid wages. We receive that each month or perhaps quarterly, depending upon the account.

Mr. KLEIN: So that actually this is based on a matter of fact, and even though a person is insolvent it is actually beneficial to the bank that the person continue to obtain credit, perhaps not from the bank but from his suppliers?

Mr. PATON: When you say "insolvent", you mean an act of insolvency, on the part of a debtor?

Mr. KLEIN: I am referring to one who is in a position of insolvency.

Mr. PATON: I would say, Mr. Klein, that in any position of such a nature the banks; primary purpose is to work the situation out to the best possible advantage of all creditors, of which they themselves are the prime ones from their own points of view.

Mr. KLEIN: Under the Bankruptcy Act, if a trader knows he is insolvent it is a criminal offence for him to continue to obtain credit, yet a bank knowing of the inventory and with closer control over the client than ordinarily, would be aware that this person is insolvent yet permits him to obtain credit without advising some agency of this man's insolvency.

Mr. PATON: What is your definition of "insolvency"?

Mr. KLEIN: My definition of insolvency would be that position occupied by an individual unable to meet his current liabilities.

The CHAIRMAN: Most members of parliament are insolvent.

Mr. CAMERON: (*Nanaimo-Cowichan-The Islands*): We cannot get credit.

Mr. KLEIN: I would not suggest that this situation is prevalent but I am aware of certain cases where a certain relationship developed between a bank manager and his client and the bank manager over-extended the credit to the individual, giving misleading information to the public in order to reduce his own mistake vis-a-vis this bank. How do you prevent that?

Mr. PATON: This is a point which I well appreciate, Mr. Klein. Let me answer your question in this manner. I think if any bank in Canada was aware of any of their employees following this practice the bank would take summary

action in respect of that individual. I can assure you the bank would not in any way, shape or form be party to such a practice or follow such a policy. There are some 5,600 branch banks in Canada managed by 5,600 people, and one must expect to find that problems in this field will arise. Certainly such a practice does not follow the policy of any of our banks and summary action would be taken if such a practice came to our attention.

Mr. KLEIN: Mr. Paton, I gained the impression both from your representation and your brief that you are not opposed so much to this bill per se, but you are opposed to it because it will dent the armour of section 88. Am I correct in that impression?

Mr. PATON: No, I do not think that is a fair summation of our approach to the problem. We feel that the bill as such, and as we have read it, is quite discriminatory in relation to the primary producer vis-a-vis the other people we have been referring to who contribute to the completion of this particular inventory about which we have been talking. We feel that the passage of this legislation would automatically bring about requests for similar legislation by others, as well as requests for certain preferences, and we feel this unquestionably would completely undermine section 88 as bankable security, and therefore would inhibit banks in the manner in which they can finance the country.

Mr. KLEIN: You do feel that the passage of this legislation would undermine section 88?

Mr. PATON: We say so in our brief, yes.

Mr. KLEIN: Surely you will admit that the position of the primary producer is vastly different from the position occupied by the packager, for example, of whom you speak in your brief? The packager supplies different industries across the country at all times of the year; whereas, the primary producer only grows his crops once a year and if he loses his crop one year he does not recover it until the next, or perhaps not at all. Surely you cannot compare the positions of the primary producer and the individual kindred industry with respect to processing?

Mr. PATON: My reaction to that statement, Mr. Klein, would be that the primary producer has one creditor, namely the processor; whereas, the packager has 500 creditors across the country.

Mr. KLEIN: The packager also has 500 employees; whereas, the producer has no employees.

Mr. PATON: That is not necessarily accurate. The packager may be a man who is dependent upon his business as strongly as the producer is dependent upon his business. He may be running an operation employing three or four people, all of whom may be members of his family. I do not think you should rule out the fact that there are many, many small operators in the sense that their particular venture is small, but I would say that the primary producer must be doubly careful as to who his single creditor is to be. We are very glad to be as helpful as we can in solving the problem, but the marketing and licensing boards which license these processors—and I think the licence has to be renewed annually—should be very careful how they handle that prerogative. Marketing boards should endeavour to take every step to ensure as much safety to the producer as possible. I do not think this is impossible at all.

Mr. KLEIN: May I ask just two more questions?

Mr. PATON: My colleague, Mr. Clark, would like to add something.

Mr. CLARK: May I say a word at this time, Mr. Chairman?

In developing your line of questioning, sir, the emphasis seems to be placed chiefly upon the producer's interest so far as section 88 is concerned. Section 88 was placed in the act, as I understand, and remains there, for the

general benefit of everyone in financing the handling of Canada's natural products. That is why it was put in, and that is why it is there still. Section 88 enables the producer to sell his products through a processor as a consequence of the credit that can be safely made available by the banking system to the processor who could not otherwise get that credit. Now, in terms of attitude toward this, I would like to put on the record what was said by the Inspector General of Banks at a hearing before the Royal Commission on Banking and Finance which commission is now in the course of preparing its report.

The Inspector General said:

Sections 86 to 90 of the act are unique and permit the banks to take and register with the Bank of Canada security that would otherwise be subject to the laws of the province in which it is located. These sections have a long and interesting background in Canadian banking and there have been numerous amendments as the list of eligible security has been broadened from time to time. A brief history of these is submitted as an appendix on pages A.53 to A.56. There is no doubt that these powers have enabled the banks to be of assistance in the past to many borrowers who would not be eligible for loans otherwise.

No, the point I want to get on record is that section 88 has enabled many small industries, processors, manufacturers and so forth, to operate with the use of bank credit in a way that they could not otherwise have done. They could have obtained credit in the form of an investment from other sources but one of the purposes of section 88, is to provide a facility whereby bank funds may safely be lent for seasonal use.

I am speaking on this subject at some length but it seems to me to be a basic issue. Mr. Gray, if I may refer to your useful question of this morning about the possibility that a number of borrowers may not be able to get credit, without the security now available under section 88. This quotation from the Inspector General's evidence bears out our statement that Bill C-5 would probably result in the reduction of that type of loan. When Mr. Abbott was Minister of Finance during the last revision of the Bank Act he made the point on his evidence—and I take this a little out of context—that “I know from previous experience going back over many years that banks do not particularly care to lend under clause 88”. In that sense he is bearing out the fact that it is not an easy and convenient method of operation but it is one that does contribute to the general public.

Mr. KLEIN: May I ask you, Mr. Paton, what procedure do you adopt when you are disposing of inventory under section 88 after a bankruptcy? How do you dispose of it? Is it a competitive price? Probably you do not have the personnel to be able to advise you as to what price you should get for that item. How do you decide as to the price at which you are going to sell the inventory?

Mr. PATON: I understand you are speaking of section 88 in general, which might well include clothing, fur coats, or anything else. We have certain rights under section 88, and this is not something that I examined carefully before coming here, but we can go in and take possession, with certain limitations. In other words, we should have to be careful that a sacrificial price is not accepted. Perhaps Mr. Carson and correct me on this if I am wrong but we have title to these goods and we can go in and take possession after notifying the borrower under section 88. We have the right to dispose of these goods. We may find, when we step in, that perhaps 30 or 35 per cent of the times we are conscious of the importance of getting the best price for these goods. We may find when we step in, that perhaps 30 or 35 per cent of the inventory is in process. We will expend additional funds to complete these

goods so as to put them into a finished condition and thereby turn them over to receivables. We endeavour to make it as painless as possible, assuming the time has come when there is no alternative but to safeguard our interest.

Mr. KLEIN: Do you consult with the debtor and get his advice as to what price you should obtain for inventory?

Mr. PATON: Yes, but we might not accept what he tells us.

Mr. KLEIN: Do you ask him to bring you buyers?

Mr. PATON: Yes.

Mr. KLEIN: There could be abuses there, could there not?

Mr. PATON: Not unless we were party to them.

Mr. KLEIN: No, I am not saying that.

Mr. PATON: And we would not be party to them because we would be conscious of the comparative price which we could get for similar goods elsewhere. We have an excellent ability to move around and to know whether this price is a reasonable price.

Mr. KLEIN: A figure was mentioned this morning of a gross of \$60 million being earned under section 88 by the banks. Could you give an indication of what percentage of losses you have under section 88?

Mr. PATON: I could not. I am sorry but I could not.

The CHAIRMAN: Is there anyone with you who might be able to answer this question?

Mr. CLARK: I do not think we could possibly give such an answer. There is the figure of 6 per cent, but that is not necessarily the income from section 88 alone. Perhaps we could correct the record. It is likely to be less than that because the prime rate is $5\frac{3}{4}$ per cent. In the section 88 category there is classified, grain loans, and so on. I do not want it to be recorded that we do in fact earn \$60 million on a billion dollars' worth of loans. We do know that that is a calculation using the maximum interest stipulated in the Bank Act, namely 6 per cent. Of course the 6 per cent on that calculation is a lot of money.

Mr. KLEIN: I am not so much interested whether the figure is \$60 million or less, but I would like to know the comparative percentage of loss.

Mr. CLARK: You would have to pay considerable interest to acquire the funds loaned.

Mr. KLEIN: I am not interested in the net, I am only interested in knowing, when you are distributing a million dollars' worth of money on credit what losses you sustain under section 88?

Mr. PATON: That is not a figure that would be available. This figure is closely guarded by each bank so it would not be available to the whole banking system. It is an item that we are constantly watching.

Mr. KLEIN: I have one last question. Would you agree to make it obligatory for a person in business who is under section 88 to have printed on his stationery and on his order forms the statement of being under section 88?

Mr. PATON: I would say that it would be an invasion of an individual's right to privacy so far as his finances are concerned, and I would not favor it.

Mr. KLEIN: You know with respect to the provisions under the law if you have an incorporated company or a limited liability company you must make it known to the public. Would not an extension of section 88 amount to that as well?

Mr. PATON: Not any more than giving a mortgage on your house. Your mortgage is registered, and section 88 is registered. I think what is needed is light and knowledge that section 88 is recorded and can be looked at by simply sending an inquiry to the Bank of Canada.

Mr. BASFORD: Mr. Chairman, I have a few questions. I would like to go back to Mr. Nesbitt's question about the mechanics lien act. Under most mechanics lien acts, such as in Ontario—and I am sure about British Columbia—the money payable under a contract is impressed in a trust. I would like to know what the effect of the imposition of this trust has had in the financing of that contract?

Mr. PATON: I would say that it has had an effect; it is a piece of legislation that the banks—and I speak frankly—are not particularly attracted to. We feel that it requires a much greater measure of control, and that it is beyond our power to control it, if you follow me, while section 88 is different. I think it would be fair to say yes, that it has affected the extension of bank credit to the smaller contractor.

Mr. BASFORD: To what extent has your involvement with the financing of these contracts been decreased?

Mr. PATON: That is a relative question because we do not know. I do not think it is a figure I could probably easily get, or that any of the banks could get. It is inherent in our approach to these credits, when the applications are being made, and if the contract proceeds are under the mechanics' lien act, then that is something we must consider in respect of this particular contractor.

Mr. BASFORD: I would like to hear some fairly specific discussion of the effects of this legislation as it affects logging, lumbering and the fishing industries with which, I trust, you are familiar?

Mr. PATON: Yes, we are. It is a very important part of our section 88 operations.

Mr. BASFORD: What effect does this have in your opinion on these industries?

Mr. PATON: I am sorry but I am having a little trouble.

Mr. BASFORD: I would like to know what effect this legislation would have on those three industries?

Mr. PATON: I would say that if this bill were to be passed and become legislation it would have an equally detrimental effect on the amount of credit available to these industries, similarly to the canning industry, which we more or less concentrated upon this morning; it would have a definite effect.

Mr. BASFORD: You are possibly familiar with the situation in British Columbia where the fishing companies—and I do not want to discuss figures—are indebted to the banks for the purchase of last year's catch. What effect would this legislation have on that line of credit?

Mr. PATON: Bill C-5 as presently drafted would give preference to the fishermen in this case as the primary producers; they would be getting the same preference as the primary producer on the farm, and the effect would be the same. It would have a definite effect in perhaps limiting the amount of credit available to the fishing industry, as in the case of the canning industry.

Mr. BASFORD: Are there problems in these industries which require this sort of legislation?

Mr. PATON: I am not able to answer that. Do you mean have there been specific losses in recent times? Is that your point?

Mr. BASFORD: Is there a problem among the primary producers in logging, lumbering, and the fishing industry requiring the protection of this legislation?

Mr. PATON: Your primary fisherman's loan is for cash to pay his wages, etc and in many cases your manufacturer advances substantially to the logger to enable him (a) to pay his labour, and (b) to pay for the cost of operating his machinery or whatever equipment he needs, and, so far as I know, there have been no pressures put on for legislation of this kind to be put through. There

are more frequently cases of bankruptcy and insolvency in these industries than there have been in canning but I do not have the figures to support that statement.

Mr. BASFORD: Does your association maintain a research department?

Mr. PATON: We maintain a research department in the association, and each of the banks has an individual research department; they have research facilities.

Mr. BASFORD: I would hope that by next fall we might be given a little more research material with respect to paragraph 3 of your brief.

The CHAIRMAN: If you will permit me to say so at this stage, I was visited a few days ago by Mr. Robson, representing The Canadian Bankers' Association, who said that this brief was being prepared in haste for this meeting, and that they would appreciate having an opportunity to do more work on it and to be able to continue with it in the fall and to present further evidence. I assured him that this probably would be the case and if the committee approved they would be free to do so.

Mr. BASFORD: I would like some more details on your statement in paragraph 3 if that could be made available.

Mr. PATON: Yes, we will take it upon ourselves to produce it.

Mr. BASFORD: That is all I have.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Paton, I would like also to refer to section 3 of your brief somewhat along the same lines as Mr. Basford's questions. I notice that contained in this paragraph there is what amounts to a heavily underlined warning that passage of this bill would in some way make it much harder for smaller producers and wholesalers to obtain bank credit. I think before we can take that warning with any seriousness we need to be given some figures on your losses, despite what you said just now that it was a private concern of each bank and would not be available. But we will have to have those figures.

I am in some doubt at this time, as to what you mean by smaller processors, and I would like to have from you a rough definition. In what sort of range would you call a smaller processor?

Mr. PATON: In general I would say that a smaller processor is one who requires to obtain section 88 security before he can get a line of credit adequate enough to permit him to carry on; and in addition to section 88 security, he would give an assignment of his receivables. There are many canning companies and processors who are financially strong enough to warrant whatever line of credit they need to process their year's pack without giving section 88 security.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do I understand from your definition of a smaller processor that it is one who has not sufficient assets to warrant a bank loan apart from his equity—or it is not really an equity—his possible equity in the produce that he will usually process?

Mr. PATON: Mr. Cameron, our lending to any processor is against his current assets. We do not lend, and at the present time are precluded from lending against his fixed assets by way of direct mortgage security. Our line of credit is a line of credit that should start out, and peak, and pay off as the seasons develop. It is a current line of credit against current assets.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not quite understand what you are telling me. In the first place you are telling me that your definition of a small processor is one who has no assets, really, except the expectation of getting possession of certain produce. This, I suppose, would be expressed in the form of contracts with producers.

Mr. PATON: No. I would not say he had no assets.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No assets from the point of view of being credit-worthy for a bank loan.

Mr. PATON: Creditworthiness for a bank operating loan is directly tied in with inventory and receipts. Term financing is available and is the type of financing that should be obtained against his fixed assets to provide his own basic working capital to justify the banks lending against inventory and receipts.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But do you classify as inventory crops which are not yet delivered to the processor?

Mr. PATON: No.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is that not the period in which he requires his loan to be ready for the receipt of those crops?

Mr. PATON: No. I know that one year's financing carries over into another; but theoretically you should be able to segregate the financing. The time the producer will require heavy bank financing is when he is due to take delivery of the growing crop from the growers.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What has he apart from the expectation of getting these?

Mr. PATON: He has a record of earnings with his bank; he has an equity in his basic worth.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It is on the basis of that you will grant the loan?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there any need for you to have section 88 then?

Mr. PATON: Specifically we will not grant a loan, but rather a line of credit which he can take down as he acquires inventory and sells the processed goods.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I must confess I am not quite clear yet.

Mr. PATON: I might just point out that we have compiled a folder here which includes references to this act, references to amendments to the act, dating forward from the 1954 revision of the Bank Act and coming up to our submission to the present Royal Commission on Banking and Finance, and our evidence given before that body. We have this here in a folder and we would very readily produce enough copies for the committee if this would be of help.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like something a little simpler for a simple-minded person like myself. How much consideration do you give to the expectancy of a processor to obtain crops in your evaluation of his creditworthiness when he comes to you for a line of credit?

Mr. PATON: My friends here tell me I have a good answer in this review. May I read it and see whether this will cover it? This is in the brief of The Canadian Bankers' Association to the Royal Commission on Banking and Finance. It has to do with sections 86 and 88.

It says:

In addition to small business, individuals and farmers there are a substantial number of well-established and middle-sized businesses in Canada engaged in manufacturing or processing raw materials which must depend on inventory to support or secure borrowings for operating purposes. These firms require bank advances for the purpose of meeting wages, accounts payable to suppliers, overhead, and other expenses in the ordinary course of business. Section 88 enables such firms to use

their inventory as security for bank loans, and it is through assistance in this manner that raw materials end up as finished products for sale in the domestic or foreign market.

Then we go on to give an example dealing with a customer's inventory of \$150,000.

I have not been able to answer your question of what we consider a small processor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not say you are not able to, but you have not yet told me, in your evaluation of the credit-worthiness of a client who comes to you for a line of credit, how much you consider his expectation of getting a crop, which he will not own until he has paid for it, delivered to his plant.

Mr. PATON: His business would be no different from that of any manufacturer. The manufacturer of coats and suits, for example, if he could not obtain his raw material from which to manufacture his finished good and sell them and turn them into receivables, could not get bank credit. If there is an unavailability of any material, then section 88 credit would not be available. I do not think there is any difference. If a processor could not get his raw material from a producer or grower, then the line of credit would not be available. He would have nothing to process; he would have no labour to pay and no cans to buy.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you agree we are not dealing with the situation of processors who cannot get their supply of raw materials. We are dealing with processors who get their raw materials and fail to pay for them.

Mr. PATON: This happens in all industries, too.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, I had other questions with respect to your ratio of losses and I must say I have not been at all convinced by your brief or your evidence unless you are prepared to present some figures on that. I would like to ask you this question. What type of security would you ask from the producer of a product that is going to be processed by a firm to whom you have advanced a line of credit. Say, I want to grow tomatoes for your client who has borrowed from you and I want to borrow from you to grow my crop; in that case, what sort of security do you ask from me?

Mr. PATON: I am sorry but I am not with you, would you repeat your question?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes. Suppose I want to set myself up as a tomato grower and there is a man coming into the district who will process my crop. This man has credit from you and I want to get a line of credit as well to engage in my operation. In that case what will you demand from me in the form of security?

Mr. PATON: The first thing I would ask of you would be a statement showing your worth and then my demands for security would rest entirely on what your statement showed. If you grow tomatoes you would have to have somewhere to grow them. I would ask whether or not you are a tenant farmer or, do you own the farm, and is it clear; have you a record of operations and have you experience in the line of growing tomatoes? Then, if I am satisfied on these questions I would give you a line of credit under Section 88, or perhaps without Section 88 if your other worth is sufficient.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not also ask me searching questions as to where I was going to sell my crop?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): And, the fact that I had a certain volume of tomatoes to sell, that is, a certain number of tons, would be part of your consideration in giving me a line of credit?

Mr. PATON: A known market for your product has to be available before we would give you a line of credit.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What I would like to get out of you, if it is possible, is this. I suggest to you that you would be concerned with the value of my tomato crop, would you not?

Mr. PATON: It is most likely, yes, because, you see, we would have your interest at heart as well as we would take into consideration the fact that we are likely to lend you money in future years and it is to our benefit to have you as a customer over many years.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you have an interest at heart to the extent that when the processor went broke you would return to me pro rata the amount of my crop he had not paid for?

Mr. PATON: Your question is hypothetical because we never have been confronted with this situation.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The tomato grower knows he is beaten before he goes to see you.

Mr. PATON: As I have said, I have not experienced a bankruptcy of a processor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I thought you stated rather rashly this morning the reluctance and the caution of the bankers to advance funds to the small processors if they have not the protection of Section 88 because you had to protect your depositors. Now, there have been quotations from Mr. Justice Abbott ten years ago when he appeared before the banking and commerce committee. I asked him questions at that time on this point, namely that the only way in which your depositors could be in any way harmed would be by failure of the bank?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Are you telling us there is any possibility, short of a complete economic collapse in Canada, of a bank failing now—and I would suggest before you answer my question you read Mr. Justice Abbott's statement before the banking and commerce committee ten years ago and also that of Mr. Graham Towers, former governor of the Bank of Canada.

Mr. PATON: I say it is a rather archaic red herring you have pulled across the trail. It is not the safety of our depositors—they are perfectly safe—and the operations of our banks in Canada have been such as to render them safe.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You made some reference to the Inspector General of banks. The Inspector General also appeared before that committee ten years ago and he will be appearing again this year, and he said that the inspection by the Inspector General is so severe and so far-reaching that there is no possibility of a bank getting too far out of line and going broke. Is that not true?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could you manage your affairs in such a way that you could go broke, with the Inspector General looking over your shoulder?

Mr. PATON: I would not make any effort to do so, I can assure you. Perhaps that is one of the reasons why losses under Section 88 have been nominal; the very existence of this security permits us to lend on a liberal basis.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): They have been nominal, have they?

Mr. PATON: I was asked for specific figures which I have not in my possession.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have told us now they have been nominal?

Mr. PATON: Yes, in reference to the \$1 billion we have outstanding.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not say that if you continued to exercise the same care and management as you have in the past these loans would be equally safe without the protection of Section 88?

Mr. PATON: Not necessarily, no.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Have your foreclosures or whatever you call them under Section 88 been of such a magnitude that they have in any way affected your loss position in connection with loans under Section 88?

Mr. PATON: Do you mean the losses are heavier than in other forms of lending?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Has your use of section 88 to recover loans you have made been of such a magnitude that if you had not had that power they would have materially affected your loss ratio?

Mr. PATON: They would have affected the ratio.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): To a discernible degree?

Mr. PATON: Yes, to a discernible degree perhaps. However, this is not something one can answer specifically. Perhaps I should point out that, in connection with the \$1 billion credit, under Section 88, in addition we have receivables security which is included. The whole \$1 billion has not rested solely against goods on the shelf and in various states of process, but also against receivables covering goods sold to the trade, and that is included.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I thought it was in your brief; however, it must have been in your verbal presentation where you suggested that your objections to this bill are not so much to Bill C-5 per se, but fear that the same demands which have caused the production of Bill C-5 may be forthcoming from other sectors of the economy? I mean you are not objecting to this as such but you are afraid it may be a forerunner of similar legislation. Is that correct?

Mr. PATON: Is that on page 2, paragraph No. 4?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes.

Mr. PATON: I think it is fair to say—and perhaps others might want to add to what I will say—that we feel the legislation as such will be quite inadvisable in its present form.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But, according to your evidence the effects would be quite inconsequential.

Mr. PATON: I do not admit that. I do not admit that my own evidence indicates that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is all I have to say.

Mr. CLARK: There is one thing I would like to say particularly and it is that in getting the record of losses that we have had under Section 88 you will have to take into account that the position might have been quite different had we not had Section 88; the loss picture under the existing security structure would have occurred in a completely different set of circumstances from those that would prevail were Section 88 no longer effective.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But it still does not get around to this point that apparently the effect of Section 88 with regard to the recovery of loans has been inconsequential and, therefore, with regard to most of the loans you have granted under Section 88 the provisions of that section have not been operating at all.

Mr. PATON: Oh, that is not so at all. Section 88 has assured the orderly carrying through of season to season operations—usually it is season to season—and the orderly carrying through from raw material to the point that it is saleable and the financing for that purpose has been provided by reason of this security.

Mr. CLARK: You see, in terms of creating bankruptcies this action is often taken by a creditor whose account is important to him but relatively small in terms of the total credit made available to the person put into bankruptcy. As a consequence of a bank using section 88 in respect to the inventory and receivables, particularly having regard to seasonal goods, someone with a smaller stake in the overall security is not in quite the same position he would otherwise be in in order to take advantage of a fortuitous circumstance in going into bankruptcy at a point. This section has been effective throughout the years as a means of ensuring the orderly financing of the processing of a crop, of timber or a fishing catch until it is in the cans or piled, or on the dock.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That act has been successful in that regard, has it not?

Mr. CLARK: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): For example, for some as yet unexplained reason the banks have considered that the provisions of section 88 makes it safe for them to make these loans and therefore are encouraged to make these loans, is that correct?

Mr. CLARK: This legislation was created, sir, so that the banks could safely make these loans.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes.

Mr. CLARK: That is why this legislation was created.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): According to Mr. Paton experience has now revealed that at least in this period of history it is perfectly safe for banks to make these loans except in a nominal number of cases where it was apparently unsafe and the banks judgment was wrong.

Mr. CLARK: Perhaps I should try to give you my answer in a different way, Mr. Cameron. In other countries where there does not exist this type of legislation other forms of security are commonly used in the lending community to accomplish the same purpose. In the United States, as Mr. Paton has said, there is active lending under field warehousing. This practice accomplishes the same purpose for which section 88 was designed. That is why they have that type of legislation or procedure in operation in other countries. In some places the purpose is accomplished by the taking of chattel mortgages or mortgages. My point, sir, is that this section 88 is just a vehicle for doing the same thing that is done by other means in other places.

Does that clear up the question?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No, it does not really clear it up at all because the evidence we have received indicates that the banks have not needed the protection of section 88.

Mr. CLARK: I do not agree with that statement.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): When we are told that your losses are nominal are we to assume that if we abandon section 88 by passing this Bill C-5 the banks will suddenly lose their good judgment, which

they have used over the years and which has enabled them to make these loans with only nominal losses? What difference will the passage of this bill make in the bankers' good judgment?

Mr. PATON: The value of section 88 to the banks in respect of bank loans cannot be related solely to the actual loss ratio; that is, where a bank does not recover fully. The existence of section 88 security enables the banks in many cases to recover loans which would be irretrievably gone if section 88 security had not been in existence. For instance, this bill recommends that in the event of bankruptcy the inventory of the cannery be put into the hands of the court. One has about 24 hours to deal with a raw inventory such as fruit before spoilage. I think we all realize that any time anything goes into the hands of the courts there are delays.

The fact is that the banks have the protection of section 88 security and in the event of a problem arising which, in the banks' judgment, necessitates some action the bank can continue the proper operation of that processing plant to enable full recovery from the inventory. This would not be true following the passage of Bill C-5. Under that set-up and in the events outlined one would have to call in a bailiff or trustee, take action for the benefit of the unpaid suppliers, and perhaps apply for injunctions. I am afraid I am now getting into a legal field and perhaps I should not do so. One has the facility of operation at the present time which reacts to the benefit of the processor as well as to the benefit of the producer in the event of trouble.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Might I suggest to you, Mr. Paton, that your argument might be very forceful if you could present evidence to us that it has been necessary for the banks in a good number of instances to take the recourse of recovery provided for under section 88. You have just told us that your losses have been nominal. Perhaps the questions we require to have answered are covered not merely by your losses but also by the number of instances involved in respect of which you had to take action under section 88 to obviate losses. I gather from the evidence that you and your colleagues have given that there have not been very many cases out of the total in respect of which you have had to take action under section 88.

Mr. CLARK: We have tried to keep them to a minimum, sir.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I gather that you have been very successful.

Mr. THOMAS: Mr. Chairman, I should like to associate myself with Mr. Cameron in being an individual of simple mind, so my questions are very likely to be as simple as his were.

We have here before us a request for passage of this bill giving certain primary producers some preferences over certain other creditors under the bankruptcy proceedings. Mr. Paton has stated, as I understand it, that he feels under the present act the primary producers labour under certain disabilities as compared to some other creditors under bankruptcy proceedings. It seems to me that the work of this committee is to discover where these inequities exist, and under what conditions they exist and then, of course, fulfil our function in recommending to parliament the steps required to remedy this situation as far as possible.

I am quite willing to admit that equity suggests a fine ideal toward which we all should aim, but one could not likely find two individuals in the world who could agree as to what is equitable under a given set of circumstances. I am sure that we are trying to adopt legislation in an attempt to make our practices as equitable as possible.

Now, if I might follow this subject, in order to clear up my own doubts, as well as those doubts of others, when a processing concern goes into bankruptcy with the relationship of these various creditors, and we will take for an example

a soybean grower, as I understand it, there are three things that may happen when that grower delivers his soybean crop to the elevator. He may sell his load of soybeans for cash, carry away his cash ticket to the bank and cash it, at which time he has completed his association with the soybean crop and it no longer belongs to him. At this stage if the processor goes into bankruptcy it is my understanding that that farmer in those circumstances has no interest at all in those soybeans according to normal practice, is that correct?

Mr. PATON: Did you state that the farmer had cashed his ticket?

Mr. THOMAS: That is correct.

Mr. PATON: That farmer under those circumstances is no longer involved.

Mr. THOMAS: In another set of circumstances the farmer may store his soybean crop in that elevator, receive his storage ticket stating that he has so many bushels of soybeans of a certain grade stored in the elevator. Possibly he does this because he wishes to take a chance on a rise in prices. At that stage the soybeans are in the hands of the elevator operator in storage. Under the procedures of bankruptcy, am I to understand that the trustee in bankruptcy takes over those soybeans which belong to this farmer, title for which has not passed to the elevator? It is my understanding that the implication from the evidence placed before us this morning is that the trustee in bankruptcy takes over the soybean crop in storage and deals with it as if it belonged to the bankrupt; is that correct?

Mr. CARSON: Is that the case Mr. Standing's brief referred to?

Mr. THOMAS: Yes, and it implies that that is the case now.

Mr. CARSON: Is that case still pending, Mr. Standing?

Mr. STANDING: It is still pending except to the extent that the solicitors have all been paid. The judge has approved of the settlement, so it is only a matter of distribution.

Mr. CARSON: That is a case we will have to look into.

Mr. THOMAS: The third thing that happens to this farmer when he takes his load of soybeans is that he may take an advance on these soybeans. He then goes away with his storage ticket together with an advance for part of the payment, but not all of the payment. He may still have an interest in the soybeans, but the elevators also have an interest in the soybeans because an advance has been made on them. To my mind this whole problem revolves around the second and third instances we have mentioned namely, the man who takes his storage ticket for his soybeans, and the man who takes a storage ticket together with an advance.

Now, we might go to the logging business and the fishery. A man delivers a truckload of logs to the sawmill. The same three situations might occur. A man might bring in a load of fish in his boat. I do not know anything about fishing, but I assume that the same three things could happen. It is in that area of possession and partial legal right that we run into this business of equity as between the parties interested in a case of bankruptcy.

Now, the question is: what can be done to bring about a greater degree of equity? Mr. Paton mentioned there were inequities. I would like his interpretation of where these inequities arise and what they are as between the interested parties in a case of bankruptcy.

Mr. PATON: I would like to assure you that I am no expert in bankruptcy. I am paid to stay out of that type of experience. I have been reasonably successful so far. I wish I were in a position to give a better answer, but as I see it, your elevator owner, your processor to whom this man delivers his soybeans, can only give title to his inventory once. If he gives title twice, he is creating a criminal or a fraudulent act of some description. In giving a storage receipt I would imagine he has to arrange with his bank, if he is under

section 88. That title still rests with the farmer who brought it in. If a farmer is merely storing his grain and has a contract that he is paying so many cents a month for storage, it could be that these soybeans will remain as they were when they came into the elevator. They are merely being stored. It would be easy to segregate that and keep it apart from any other inventory which the elevator company has under section 88, or under whatever type of security they have given. Also, the bank or other lender should have no interest in that specific security because they are not asked to finance it. The processor has not paid anything to the grower.

In a case where it is partial, this might be more difficult. I am speaking of a case where partial payment has been made by the elevator to the producer. I would say, however, that if there is partial payment, perhaps the load could be divided into two. It seems to me that it is not a difficult situation to segregate the inventory to which the elevator company has title.

Mr. OTTO: Mr. Nesbitt put the question that where grain is bagged and could be identified, the title may or may not pass. If it is mixed, it loses identity. As Mr. Standing said, these decisions take time. It usually takes five or six years to establish in our courts where the title lies. It may be that Mr. Nesbitt's comments earlier will be of help in connection with where the title does pass in these matters.

Mr. THOMAS: I understood from Mr. Nesbitt's comments that he was drawing a line between grain as attached to real estate and grain as separate from real property. It becomes separate at the time it is harvested, cut and removed from the land. A standing crop would remain a part of the real estate, it would belong to the real estate on which it grew. Once it is cut and becomes mixed, I think there is a conflict of meaning there and maybe we are talking at cross purposes. I believe Mr. Paton also stated that in his opinion there would be no great difficulty in determining the amount which should be ascribed to any crop. Take, for instance, a can of tomatoes. So much would go for the label, so much for the can, so much for the raw material, so much for the fruit itself. In that way it would be a reasonably simple operation to set a value on this production or to distribute the various values included in this production at the time it was completed. Now, if that was so, then it appears to me that possibly the regulations or practice could be changed so as to better protect the interest of the primary producer. Coming back to the agricultural scene again, the objection to the present operation of section 88 is that if a processor goes bankrupt or in the case we heard a great deal about of an elevator company which went bankrupt, the trustee steps in and everything that is there is taken over by the trustee in bankruptcy, and the primary producer who may even hold storage tickets, is given no priority. I may be wrong there, and if so I shall be glad to be corrected. But the trustee takes over everything in which the primary producer may have complete ownership or partial ownership and this is all distributed.

Now, as I understand it, the present proposal is to amend the Bankruptcy Act and it aims to cure that situation and to protect the ownership as it may exist of the primary producer in the products which are coralled in this particular bankruptcy case.

The CHAIRMAN: Mr. Moreau?

Mr. MOREAU: Getting back, as many before me have done, to section 3 of your brief I would like to pursue it a little further. I do not think your answers have been at all satisfactory in relation to this particular section. In view of the arguments put forward that your losses have been very small—at least relatively small in relation to the number engaged in the industry—you are making a comparison between the risks in other areas of lending, perhaps not under section 88. Therefore, I have to concur with Mr. Cameron, that I do not see

how giving the primary producer a preferred position would change substantially the whole question here. I do not at all accept the premise put forward that certain people need precipitate bankruptcy, if there was a certain practice involved under section 88 which prevents people from precipitating bankruptcy at times which perhaps are not too advantageous to the processors.

I think that the banks, with their very much superior means of acquiring information, having very very close control of the loans they have made to processors and so on, would have some control over the whole operation of financing, and if necessary would advance further loans. I do not really accept the point made that a very minor creditor would precipitate bankruptcy. I feel there is much more to this problem than that, and I cannot accept it. I feel that I have to agree with Mr. Cameron that we should have some sort of record as to exactly what sort of risks are entailed, and what the ramifications of this legislation would really be in specific terms.

The other point I would like to make is in regard to a statement you made earlier this morning that you did not consider the history of the industry in a lot of loans. Am I correct in this, that you assess the loan application essentially on a very personal sort of basis, at least, that is perhaps placed before you. Do I interpret your words correctly?

Mr. PATON: You do. We have of course knowledge of the industry and its operations, no matter what phases of lending we are in; so we have to consider it and its effect upon Canada and its development.

Mr. MOREAU: I think this is a very important point because it seems to me that certain industries have a high failure rate while others have a very low failure rate. This must come into your consideration. Therefore the action, with the superior ability of the banks, is I think to assess the risks, and I do not quite agree at all with that, because you can write to the Bank of Canada and find out whether there is a loan under section 88 of the Bank Act; whether it is in effect or not, and I think you will agree that the solvency or the position of these processors—many of the smaller processors, is very, very volatile and change quite readily.

While the bank demands certain information with regularity from this processor, they must essentially control their own interests here and protect their own interests, and because of this I do not think the producer is given relatively the same position. My only comment is that I think we need a little bit more specific information on the whole matter here. And if I interpret the committee thoughts correctly—perhaps I am being presumptuous—I think the principles embodied in this bill seem to find some general favor. Indeed, I find that the main objection being raised is that other industries may be soon seeking a similar sort of provision, and that other factors or groups may want the same relief under section 88.

And the second objection seems to be in the clause in the bill, under sub-section 2 of 51(a) where the handling of the bankrupt estate is provided for, and I think this may be a very valid objection particularly in the more volatile industries, the canneries and so on. This is a very real point. It seems to me that you should be prepared—or your association should be prepared to offer some alternative solution, either to protect the primary producer, perhaps to expand his special position here, which I, frankly find not to be very different from a waiver, and if we accept this proposition, perhaps you might agree to consider the whole new mechanism to give him sound protection or at least you may offer improvements, and so on of this bill. I have been listening all day to what has been going on, and I cannot help but conclude that I am in favor of the principle on the evidence I have heard—the principle of the primary producers here being in an inferior position when it comes to the necessity of a risk. I would like to get your comments on this.

When Mr. Whelan presented this bill in the house we heard some allegations, and you have briefly touched on this point earlier that perhaps the banks have abused their special privileges, in certain circumstances under the provisions of section 88, and that they have advanced credit, and been able to get new credit, so that when they precipitated bankruptcy they would be in a much better position to recapture their investment. I would like to have your comments on this. I do not know if there are very many specific instances of this or not, and it seems to me that the committee here would be very interested in this particular aspect if indeed this is true. I would like to hear what you have to say about it.

Mr. PATON: Your question is—may I put it this way—that if an insolvent situation exists, and if the bank has special knowledge that it does exist, or if we feel that bankruptcy is inevitable or a closing out of the business, we then look to see if we can bring other people in?

Mr. MOREAU: These were some of the allegations, not my own.

Mr. PATON: You mean they would bring other creditors into the place and take over their position? I had better not use a colloquialism. That is by virtue of our special knowledge, we would bring other people into play and make them take a secondary position to us? I have been in banking for 35 years and I have never in my experience had any thought that any bank would ever take such a position. We have been caught in positions and we have worked out of them in many cases to the ultimate benefit of a successful operation. At all times we have worked with our own interest in view, of course, but never with a view to bringing anybody else in and taking any advantage of their inferior knowledge of the situation.

Mr. MOREAU: I have no knowledge of such a situation, and I was not making that charge.

Mr. PATON: I appreciate the opportunity of putting it on the record, but I am satisfied that I speak for all the banks when I make a statement like that.

Mr. WHELAN: I would like to submit some evidence I have that is contrary to that.

The CHAIRMAN: You will have to wait your turn.

Mr. WHELAN: I do not want to forget, Mr. Chairman, that it is my bill.

Mr. LLOYD: Mr. Chairman, on a question of procedure—

The CHAIRMAN: May I say that we are proceeding with questioning of witnesses. The committee will hear the witnesses that it wishes to hear. It is certainly not the intention of anyone on the committee, and it is certainly not the intention of the Chairman to disregard anyone here; but we have an established procedure and will proceed that way unless the committee would like to change it.

Mr. LLOYD: Mr. Chairman, it was on the question of procedure I wish to speak. I think that we should try to keep this period for questions.

The CHAIRMAN: Thank you, Mr. Lloyd. I agree with your point.

Mr. MOREAU: I wanted to have that point on the record.

Mr. PATON: We appreciate your suggestions. We have a lot to learn and we are very anxious to hear your suggestions.

Mr. MOREAU: I would like to reiterate my first point that perhaps some alternate solution may be put forward by your group to handle this matter. I am sure the committee would be interested in this. Frankly, I was pretty well unfamiliar regarding this thing. I do not really feel it is a fair ball game, frankly, from the evidence I have been able to gather today. I appreciate the banks' special position. However, I think that a primary producer could be put out of business. This is essentially my point.

The CHAIRMAN: Mr. Whelan, if you do not appear to be satisfied, I might point out that the committee is the master of what is occurring here now. You are here as a witness, not as a member of the committee. The committee will determine whether or not it would like to hear further evidence. I think it was decided earlier this morning that when the questioning period of The Canadian Bankers' Association had taken place we would then question Mr. Standing and, following that, we would then question you. I believe this is the way matters will have to stand.

M. Côté (*Chicoutimi*): Monsieur le président, je vous remercie de me permettre de poser quelques questions. Les banques prennent-elles beaucoup de risques, quand on considère le pouvoir d'expansion monétaire qu'elles détiennent lorsque, par exemple, elles sont obligées de maintenir une réserve de seulement 8 p. 100?

Mr. PATON: The statutory reserve of 8 per cent is the cash reserve; 8 per cent of the deposit liabilities. Eight per cent of these must be held in the Bank of Canada on an average for the month. An additional 7 per cent secondary reserve by agreement with the Bank of Canada has to be kept in short-term money market securities. This 15 per cent is the liquid reserves of the bank. It has nothing to do with the reserve against loans or against the lending dollar. It enables the banks to handle the day-to-day fluctuations in their cash positions and enables them to meet calls on their liabilities to the public and to the country. In no way does it allude to consideration of necessary and required reserves against our holdings.

M. CÔTÉ (*Chicoutimi*): Pourquoi le bill C-5, qui est proposé actuellement, obligerait-il les banques à restreindre leurs produits et leur production primaires, alors qu'elles ont en réalité le pouvoir de créer, de rien, environ 90 p. 100 des capitaux?

Mr. PATON: I am afraid I am not much of a theorist so far as the creation of capital is concerned. I like to look at the dollars we must pay to somebody. The dollars we lend are the dollars we borrow from somebody.

Mr. OLSON: You are not serious about that, are you?

M. CÔTÉ (*Chicoutimi*): Le ministre des Finances (M. Gordon) a déclaré à la Chambre, il y a deux jours, que les banques à charte, au Canada, ont créé, depuis huit ans et six mois c'est-à-dire depuis la fin de 1954 à venir au 3 juillet 1963, la somme de 5 milliards 248 millions de dollars.

Le PRÉSIDENT: Si vous me le permettez, monsieur Côté, j'aimerais intervenir ici pour une seconde et vous suggérer, si possible, de rester un peu plus dans le cadre de la discussion. Je ne vois pas de rapport entre votre dernière question et le bill C-5. Il y en a peut-être, mais je n'en suis pas certain. Je tiens à vous avertir que l'heure avance et je vous demanderais de vous en tenir au bill C-5.

M. CÔTÉ (*Chicoutimi*): Est-ce que, effectivement, les banques considèrent qu'elles subissent une perte lorsqu'un client ne peut payer le crédit qu'elles ont créé dans la proportion de 90 p. 100?

Mr. PATON: To answer that question I would have to accept the premise that the banks create 90 per cent. That I am not prepared to do, nor, unfortunately, am I prepared to argue comprehensively against it, because I did not come prepared to do so. If this form of questioning could be—

The CHAIRMAN: If you will forgive me, I interrupted. I will repeat in English what I said in French a moment ago to the questioner. It was this: that I was unable to see the connection between Bill C-5 directly and the line of questioning which the present questioner was following. I suggested in view of the advanced hour that to the extent it was possible he come to his point rapidly and stay as close to Bill C-5 as he could.

Mr. OLSON: Mr. Chairman, on the point you brought up, I am prepared to show, with some very substantial evidence taken before a committee of this nature some years ago, that there is a very direct and real relationship between the line of questioning he is now pursuing and the intent of the bill.

The CHAIRMAN: That may be. I am suggesting he come to it so that I may see it as well.

M. CÔTÉ (*Chicoutimi*): Justement, monsieur le président, j'ai préparé mes questions selon les questions posées antérieurement, et c'est pourquoi j'estime que j'ai le droit de les poser.

Le PRÉSIDENT: Mais si vous en veniez au point, par exemple.

M. CÔTÉ (*Chicoutimi*): Encore une question, seulement. En considérant les privilèges extraordinaires que détiennent les banques à charte, ne serait-il pas normal qu'elles s'offusquent de la présentation du bill C-5, même si cela comportait un peu plus de risques.

Mr. PATON: I would say that we chartered banks do not consider we enjoy extraordinary privileges; I would say that we are in this lending business in competition with many other lenders, many of whom have wider fields to cover than the banks. On presentation of the bill we studied it with a view of finding out whether or not it would be beneficial for Canada, because if it is beneficial for the country it is beneficial for the banks.

Le PRÉSIDENT: J'espère, monsieur Côté, que je n'ai pas été trop sévère à votre égard, mais à ce moment-là, je ne comprenais pas le sens de vos questions, ni leur rapport avec le bill C-5.

Mr. OLSON: First of all, I would like to establish, if I could, in my opening remarks, the relationship of the bill that is before us. For example, at page 287 of the evidence that was presented to this committee in 1939 Mr. Graham Towers, then governor of the Bank of Canada gave evidence, which reads as follows:

QUESTION: But there is no question about it that banks create the medium of exchange.

Mr. TOWERS: That is right. That is what they are there for.

And then later Mr. Towers says:

That is the banking business, just in the same way that a steel plant makes steel.

Do you agree with this, Mr. Paton?

Mr. PATON: I would not agree or disagree until I have read the whole text prior to and subsequent to what you have read. Mention was made there of a medium of exchange.

Mr. OLSON: It says create a medium of exchange. That is right—credit.

Mr. PATON: Is that the medium of exchange?

Mr. OLSON: In the context it is used here, yes.

Mr. PATON: Well, that is why I would be hesitant to express an opinion without studying it. It is not that my group would be afraid or hesitant about answering these questions if we had knowledge they were coming up.

Mr. OLSON: Well, I do not want to get into an involved discussion because I agree it is very involved and that people with whom we are discussing it should come prepared but, if you accept what Mr. Towers has said then you are, in fact, manufacturers of credit, medium of exchange, expansion of the money, or whatever you want to call it.

Mr. PATON: I have the greatest respect for Mr. Towers and I have yet to see something of his with which I do not agree.

Mr. OLSON: And, by the same token the producers in this case are the manufacturers of their component that goes into the processors assets; therefore, I think the relationship between the two is this, that if you manufacture the credit that is used and somebody else produces some other ingredient there is no reason that you should have superior access to the proceeds of the inventory. Now, I do not want to get into an involved discussion but I think that reasonably attaches the relationship of this line of questioning to the bill that is before us at this time.

The other thing, Mr. Paton, that disturbs me a bit is the statement made earlier in this meeting by you and Mr. Clark, I believe, that one of the primary concerns for objecting to this bill was that you wanted to protect the interest of the depositors—that is, the peoples money that you were using. While I am satisfied with your explanation that you are not trustees in the usual context of what that word means you still, I think, reserve the opinion that there was a fairly direct relationship between the protection you have under Section 88 and the safety of the deposits. Is that not correct?

Mr. PATON: Not alone under Section 88, the relationship of a general lender the basis of lending and the risks we take.

Mr. OLSON: We are concerned primarily with a bill that seeks perhaps to mitigate some of the provisions in Section 88 and so I think we have to accept what you said, that this was the reason for your objection to Bill C-5.

Mr. PATON: I would not want to consciously say that as I read Bill C-5 originally the question of the safety of my depositors' money came to my mind and that I thought this is going to hurt this particular situation. But, as a practical banker who has lent many dollars, any time I lend money I have to get it back again.

Mr. OLSON: Yes, I agree. But, the argument was presented to us a number of times and I would like you to substantiate or withdraw the suggestion that was put forward that you were, in fact, jeopardizing the safety of these depositors if this Bill C-5 was enacted.

Mr. PATON: If the evidence shows that I have attached a direct relationship between the two I was wrong and I spoke incorrectly, but frankly I do not think the evidence will show that.

Mr. OLSON: Mr. Towers also said at page 455 of this committee meeting:

The banks cannot, of course, loan the money of their depositors.
Do you agree with this?

Mr. PATON: Would you repeat that again please?

Mr. OLSON: Mr. Towers said:

The banks cannot, of course, loan the money of their depositors.

Mr. PATON: I think the previous answer I gave will have to apply; that is, you cannot take one sentence out of context and ask me a direct question without the whole text. I would like to have the opportunity of studying the whole section and perhaps coming back. At this time I would not say yes or no to that question.

Mr. OLSON: Without asking you to dispute what Mr. Towers has said, do you think that is a fair statement?

Mr. PATON: I would prefer not to answer that question.

Mr. OLSON: May I suggest that you have a look at that statement as it appears at page 455 at some stage because this is a rather important discussion.

Mr. PATON: I do not want you to think I am treating this subject lightly, but I am not in a position to say yes or no to your questions. We will certainly examine this statement.

Mr. OLSON: When you make these loans to a processor in respect of which you have taken protection under section 88, if you do not use depositors' money, from where do you get that money?

Mr. PATON: Of course I cannot answer that question, not having answered the previous questions.

Mr. OLSON: Mr. Chairman, I would suggest that this is not a facetious discussion. I should like to know the answers to these questions, because if the banks are manufacturers of the credit that is used in respect of a processor growing potatoes, catching fish or cutting logs, his interest in his produce is as important to me as the interest of the banks in creating the money which goes into the finished product in view of the fact that banks have a superior interest in the inventory in the event of bankruptcy.

I should like to ask one other question, Mr. Paton. You mentioned in paragraph 7 of your brief that if this bill is passed it will protect a minority, namely the producers. I am not paraphrasing your statement but trying to save time by indicating its import. With the adoption of Bill C-5 the banks, as well as many other individuals, would not have the protection afforded to the primary producer. How do you reconcile the statement that the provisions of Bill C-5 protect a minority when the fact is that under section 88 of the Bankruptcy Act the banks have a superior interest? Do you consider banks are not a minority?

Mr. PATON: In relating the banks' investment to any industry one cares to consider, the banks would definitely not be a minority. The banks numerically are a minority, but in relation to their investment in the country, in the fishing industry, the lumber industry, or any other industry one cares to consider, the banks are a very substantial and integral partner of the operators, be they farmers or any other producers. As I mentioned this morning, out of 34,000 loans under section 88, 27,000 were made to individual farmers. I think it is fair to say that banks have a very substantial rather than minority interest.

Mr. OLSON: You are not suggesting, of course that your 27,000 figure is comparable to the number of primary producers protected by the passage of this bill? You said you had made 27,000 loans, but I suggest there would be a substantially greater number of primary producers protected than 27,000.

Mr. PATON: Yes. What I was trying to relate is that our interest in financing the industry is not predicated on a preference to the processor in relation to the producer. We have a very vital interest because every time a producer suffers a loss one can rest assured that he has a very substantial bank loan which is in danger of being lost or remaining outstanding for many years, until the loss is recouped, because the primary producer and the lending bank are partners in the same way as in any other operation.

Mr. OLSON: Would you say that section 88 of the Bank Act is now discriminatory in favour of banks?

Mr. PATON: No. In a given set of circumstances one takes a certain course. With this security available to us, we take our part in the financing of any industry you care to mention, basically through a value-judgment of the situation. We will take our place as a partner in this operation because these certain set of circumstances are available to us. If this source of security was not available to us, once again, we would have to make a judgment as to whether or not we would take our place to the same extent as a partner. We consider this security as part of the background in making our judgment in respect of any application.

Mr. OLSON: When a bankruptcy occurs, do the provisions of section 88 of the Bank Act discriminate in favour of the banks?

Mr. PATON: The provisions of section 88 of the Bank Act give us the position of being a secured creditor. In respect of every bankruptcy there are

preferred claims, secured claims and ordinary claims in that order. Preferred claims are claims which must be paid such as wages and taxes. Secured claims are claims of people with specific security. The mortgage holder on a property is a secured creditor. Would you suggest that the Bankruptcy Act is discriminatory in favour of a mortgage holder who has taken a mortgage on a piece of property and given full value?

Mr. OLSON: Quite frankly, Mr. Paton, in following up the suggestion made by Mr. Cameron, I am not convinced that you require this protection. I am wondering why you require the protection provided by section 88, which puts you in a position of preference over the producers. Perhaps you would like to tell us whether you think it is more convenient to the operation of a bank to have the provisions of section 88 available, and whether that is the main reason for your desire to maintain the act as it is at the present time?

Mr. PATON: I do not think I can agree with your suggestion, Mr. Olson. The convenience of the operation of a bank is important to us because we like to think of ourselves as efficient operators. We like to keep our overhead down, as does any other profit making operation. I do not know whether that is a good word to use or not. Convenience is important to us, yes. This is not the basis however upon which we decide whether a man or a company is entitled to a line of credit of \$25,000, \$50,000 or \$100,000. If the maintenance of section 88 involved solely a matter of convenience, we would be better off lending money to substantial operations, allowing us to take care of our business much more expeditiously. That would be my answer to your question regarding convenience.

Mr. OLSON: Thank you, sir.

Mr. LLOYD: Mr. Chairman, I should like to direct a series of questions to Mr. Paton. I gather from the evidence you have given, Mr. Paton, that there is a primary consideration in making a loan under section 88. That primary consideration involves the ability of a borrower to repay from the assets he pledges through the ultimate liquidation of those assets on the market place. Do I gather from what you have said as a banker, that under the provisions of the Bank Act, keeping in mind the traditional intent of our banking system to give stability, you are looking for liquidity first? In other words, you are looking for the ability of a person to repay a loan from the assets involved?

Mr. PATON: That is correct.

Mr. LLOYD: Is that your primary reason for lending money? Proceeding on that premise, you obtain guarantors against the contingencies of a lost crop as a result of bad weather, or whatever the cause, and is it not your traditional policy to attempt to avoid calling on the creditors? Do you try to make your loans in such a way as to avoid calling upon the guarantor except as a last resort?

Mr. PATON: That is correct.

Mr. LLOYD: Does it not follow that when examining a loan request from a primary producer, you would consider the individual's assets and net worth in order to preserve the liquidity of the Canadian banking system? Have I outlined correctly the basic principle which you have enunciated?

Now we go to the processor. In the case of the processor, he comes to you with a request for \$100,000 loan, and he says, "I am willing to assign to you the title to the material which has been in my hands for processing". You examine his statement of financial affairs, his assets and his liabilities. Do you usually ask for a list of his creditors?

Mr. PATON: Yes.

Mr. LLOYD: Therefore you are aware of the contingency of financial difficulty when you are making this loan under the provisions of section 88? Is that correct?

Mr. PATON: We are fully aware of it and of his liabilities.

Mr. LLOYD: And in those cases, I gathered from some evidence you gave earlier, you usually have a guarantor or try to obtain some underlying guarantee for the liquidation of the loan.

Mr. PATON: I am not sure that "usually" is the proper word. Frequently we have.

Mr. LLOYD: Depending upon the past experience with the particular processor, I suppose. You are guided by that.

Now finally, there are instances where human judgment may err, and you find you have to call upon the guarantor. We have had instances of that in Canada in bankruptcy. You call on the guarantor, or you notify him that his guarantee is in jeopardy. Then you proceed to take possession of the pledged asset under section 88 and to liquidate it. If your recovery is insufficient to pay the loan, you then call on the guarantor for the balance. However may he not, under the subrogation provisions of section 88, pay you off and take possession? In some instances he has a pretty intimate knowledge of the condition of that stock, and perhaps in some few instances, he has the capability of defeating the best interests of his creditors. Has he not?

Mr. PATON: Yes.

Mr. LLOYD: So that this responsibility lies primarily with the person who got the business in trouble in the first instance.

My line of questioning is leading up to this. In view of the fact that you in your administration pay very close attention to the list of creditors in your own interest, because many of those creditors would contain the names of many of your clients, and if there is a valid case to protect the unsophisticated primary producer from the processor, which is the real case in point which we are trying to deal with under bill C-5, would it not be practical to consider some amendments to the Bank Act itself rather than interfere with the whole procedure of section 88? To put it another way, would you be prepared to consider that at a later meeting of this committee? Could you, in some way perhaps, provide for some allocation of funds under certain cases where loans are made to the processor to see to it that at least some funds are disbursed to the primary producers' creditors? Because I have said that I must confine myself to questions, I cannot obviously say what I think of this bill at this stage, but I think you can gather from my suggestion where I stand. So that I would like to ask you the following question: would it no be practical—and you may wind up finding other reasons not to do it—and would it not be a more acceptable alternative to try to regulate the kind of loan under section 88 instead of hazarding the whole operation of this section generally in the market?

Mr. PATON: Mr. Lloyd, I might say I find your words leading up to the question very lucid, and I find the question very interesting also. To say whether or not it would be practical is something I would like to mull over, and I think we all would. If you do not mind, we would all probably like to look at today's proceedings and study them, so that then we can come back and give you a more comprehensive and more sensible answer to your question.

Mr. LLOYD: Mr. Chairman, I would like in particular to emphasize the operation of this subrogation section of the Bankruptcy Act. This is one that sometimes causes a great deal of inequity which Mr. Thomas was trying to ascertain, and I think everyone, as well as you, Mr. Paton, will agree that there is cause for us to be concerned about the unsophisticated primary producer who does not know of the operations of the Bankruptcy Act. There is every justification to be concerned; we only differ as to the gravity.

The CHAIRMAN: Are there any further questions which the committee would like to direct to the witness? If not, then, on behalf of the committee and myself, I would like to thank you, Mr. Paton, Mr. Clark, Mr. Carson and Mr. Robson for appearing before us today. If you wish to retire, I think the committee would give you permission, or if you wish to stay, our hearing will continue. We have other witnesses, and you may wish to hear what they have to say. Thank you very much.

Now, as agreed this morning, I would ask Mr. Standing to come forward, and the committee may address questions to him if they so wish.

Mr. OTTO: It is obvious, Mr. Paton, that we are expecting a pay raise because of our air of bravado in relation to the bankers.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is why we are rude to the bankers.

Mr. OTTO: Mr. Standing and Mr. Chairman, I do not want to appear repetitive. I believe that we can define this measure as a remedial one. There is an ill or a wrong that the sponsor says exists, and it seems to me that the burden of carrying a loss has been placed on all parties. We have heard evidence from the bank representatives that they bargain for risk, the manufacturer of component parts bargains for risk, and I will ask Mr. Standing, if you were here during my earlier questioning, whether you know the operation of the producers and whether they, when they set their price, bargain or do they consider that there may be a loss and do they provide for it?

Mr. STANDING: I think it is very difficult to see how producers who do not pool the product could consider establishing within the price a factor for risk of non-payment. Even among canners in Ontario where they do not negotiate price, they have attempted to establish licensing procedures to establish proof of financial responsibility.

This apparently has been a dream. They cannot work into the structure a factor to recover the risk in the price. My immediate neighbours sold fruit to a canning company which went bankrupt last year. They did not spread their risk out to cover it by selling to a number of canneries, but instead they contracted to one, and they lost it all. So it would not matter what the price was. They could not consider the risk in the price.

Mr. OTTO: You said this happened last year, this particular case?

Mr. STANDING: Yes.

Mr. OTTO: You mentioned pooling. What do you mean by pooling?

Mr. STANDING: Well, in the case of grain producers in western Canada, they pool their crops. They put their crops into the hands of the Canadian wheat board, and they receive only an initial payment, after which all the producers share in the balance of the proceeds. Now let us say they sold wheat to Poland and the Canadian government would back them. They would all share in whatever loss there was if Poland did not pay. But in the case of the commodities in eastern Canada, not under the Canadian wheat board, they are not protected in this way.

Mr. OTTO: Is there a great number of private producers who would suffer a risk from selling to many processors, or is it merely the case of a sale to one processor?

Mr. STANDING: In the case of the processing crops, usually there are contractors. Most factors prefer to have one man contract with them for it; and we actually find in practice it is done with one processor.

Mr. OTTO: What do you mean by contractor?

Mr. STANDING: In the case of canning companies they sign an agreement to take the produce and a given quantity of goods from the processors.

Mr. OTTO: Do you mean that you grow them for the processor?

Mr. STANDING: Yes. All your canning crops are contracted for by written contract.

Mr. OTTO: Your answer is that it is in your opinion almost impossible for a producer to estimate a possible loss and to provide for it by his price. Is that correct?

Mr. STANDING: We have been told that when producers are concerned about the quality of the man they are dealing with, they should demand cash.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You referred to losses incurred by your immediate neighbour. What happened in that case? Did the firm go bankrupt? What happened to the crops that had not been paid for? Were any of them in the hands of the processor?

Mr. STANDING: According to the producers it is in the hands of the bank. The pack was in the warehouse, and the credits were discontinued.

Mr. OTTO: I have one more question. On the last page of the report of the bankers association they said that it is quite simple for a producer to get a report of the financial worthiness of the processor. From your experience would you say that it is easy or difficult, or do most producers know how to get the information as to the financial responsibility of the processor?

Mr. STANDING: I do not like to question your interpretation, but if they say it is easy for a producer to get a statement of the financial position of the processor, all they can find out is if they are under section 88.

Mr. OTTO: Paragraph 11, if you will notice, says—there is a query about an hon. member's remarks in the House of Commons, and it says:

"The fact is, of course, that every person, upon payment of a fee of 25 cents is entitled to have access to and to inspect the registration book at the office of the Bank of Canada in the province where the processor has his place of business—"

This is theoretical. But what is the practical application of it?

Mr. STANDING: This does not say anything about his financial responsibility. Clause 11 refers to the fact that anybody may, by paying a fee, find out if a company is under section 88 of the Bank Act, and that is all. It would be absolutely ridiculous. I would not even do it for the marketing board. We have 425 licenced buyers of wheat in Ontario, and if any of them did not come under section 88, we would not give them a licence.

Mr. OTTO: Suppose I am a producer and I want to find out if the John Jones Company is a solid company so that I might sign a contract. What do I do?

Mr. STANDING: The producer company is where, at the moment?

Mr. OTTO: Are you aware of the mechanics?

Mr. STANDING: Oh yes, our board makes application to the banks and to Dun and Bradstreet for the financial position of the particular person applying to deal with that product. I have a number of them in my file and all of them are worthless. We have only one; we have been told that only one was; it was indicated to our office that the man was not financially sound, because we did not get a reply. That is all I could do about it. I nearly had litigation over it, because the man insisted that he have a licence to deal in soya beans, but we understood that he was not financially responsible.

Mr. OTTO: Did you receive a financial report of the company which went bankrupt?

Mr. STANDING: We had a financial report three days before dissolution.

Mr. OTTO: What was the financial report?

Mr. STANDING: It was satisfactory.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Where did you get it?

Mr. STANDING: I cannot answer that question directly. This was under fruit and vegetables which was a little outside of my jurisdiction.

Mr. LLOYD: May I make a practical suggestion? This is a very involved matter and it has implications as to what it might do to the provisions of the Bankruptcy Act. Now, if we have to pursue all that, we have to examine at some considerable length and debate at some considerable length the provisions of section 88. I mention merely one of the provisions of the statute. It seems to me that we might now hear from Mr. Whelan who has been most patient and then we might adjourn.

Mr. MOREAU: We began this morning with a statement from Mr. Whelan.

Mr. LLOYD: Oh, I am sorry. I was not here then.

The CHAIRMAN: We have already heard from Mr. Whelan, when he presented his brief this morning.

Mr. LLOYD: Then I move that we now adjourn.

The CHAIRMAN: If I might inquire about the questioning of Mr. Standing, would you mind at the moment before moving adjournment, if there are not too many questions of Mr. Standing, disposing of his part of the testimony. We shall have to hold another four or five meetings to get through with this matter, and we might not require Mr. Standing to come back.

Mr. MOREAU: I was wondering about this bankruptcy you referred to last fall, when one of your neighbours was involved. I wondered if the provisions of section 88 applied in this case.

Mr. STANDING: Yes.

An hon. MEMBER: I second the motion to adjourn.

The CHAIRMAN: Mr. Whelan will be with us for some time. He is available at all times, and when this hearing reopens, he will be available for questioning. Are there any further questions of Mr. Standing?

Mr. MOREAU: I presume Mr. Whelan will be leaving and will not be here for any more committee meetings before the recess. Is that a fair assumption?

The CHAIRMAN: Unless the committee decides to proceed further between now and the recess, that is a fair assumption. We shall have to determine just what our program is going to be.

Mr. MOREAU: In view of that, I have one or two questions to ask Mr. Standing.

The CHAIRMAN: I was talking about Mr. Whelan, not Mr. Standing.

Mr. OLSON: On page 6 of the brief you read to us this morning, Mr. Standing, you say:

Over 400 dealers in grain in the province of Ontario receive grain from primary producers in order to condition and sell said grain in the normal grain trade channels. In order to finance the grain in the interim between purchase and sale, dealers borrow money under section 88 of the Bank Act, to pay producers.

I understand all this. Then you say:

If producers are not paid, then attachment by the bank of the said grains is not necessary.

Would you expand on that?..

Mr. STANDING: I do not understand section 88 of the Bank Act as well as I should. I was under the impression in the case of all of the grain bankruptcies that it was assumed that the dealer in grain pledged the grain he owned to the bank for the loan when a dealer makes an arrangement with the bank under section 88. I have just done that. We have just got credit from the bank to buy all surplus wheat in the province of Ontario under

section 88; but we do not borrow any money. When we buy wheat and pay for it we pledge the documents with the bank and they honour the cheque we made out to the person we bought it from. Now, if the bank only took an attachment to the grain that the person in bankruptcy owned, then the producer who had not sold his grain should be able to get it back. That is what I meant in this clause.

Mr. MOREAU: Mr. Paton indicated that the bankers association could only report one case. I think this was the statement that was made. Not only that, he indicated there were very few bankruptcies. I wonder whether for next fall you might produce statistics as to how many cases were involved in the last five years.

Mr. STANDING: Of course it is not just bankruptcy; it is dissolution. It is the same thing. In one case nobody could afford to put the man into bankruptcy.

Mr. MOREAU: I think we should have this information.

Mr. STANDING: I can get it.

Mr. OLSON: I take it, then, that your understanding of the provisions of section 88 of the Bank Act is that if this grain was in an elevator, despite the fact that that elevator company had arranged for a line of credit under section 88, unless they had paid the producer, he would be able to get it back.

Mr. STANDING: That is right, because if any bank loaned money under section 88 on grain that the dealer owned, any other grain that was in the elevator—

Mr. OLSON: Your understanding is that the bank could not attach the grain.

Mr. STANDING: This was established in the supreme court of Ontario by Judge Smiley. The Kellogg Company in London and the solicitors for the Royal Bank of Canada and the solicitors we engaged jointly as producers argued about who owned the actual grain, and whether the bank had title.

Mr. OLSON: Was this a question of identifying it or ownership aside from identity?

Mr. STANDING: Title.

Mr. OTTO: I have one question. On the question of the legality, is it true that the action was commenced in 1957 and no decision is yet reached in 1963? How many producers who would be in that difficulty could last six years with all their crop returns held up by court action? Is this really even of any consequence?

Mr. STANDING: We are dealing here with 110 producers who had a portion of the year's earnings involved.

Mr. OTTO: I am sorry—just a portion.

Mr. THOMAS: We have a motion before the committee that we adjourn. However, I think out of courtesy to Mr. Whelan we might give him a minute or two before we adjourn.

Mr. LLOYD: I came here to help make a quorum. I am willing to stay here to hear what is apparently some urgent matter Mr. Whelan would like to answer. But I have one question I would like to ask.

The CHAIRMAN: I was going to say we will first of all finish our questioning of Mr. Standing.

Mr. LLOYD: Mr. Standing, you have heard my questions. I did recognize the problem. Do you think there would be some practical advantage in pursuing amendments to section 88 of the Bank Act rather than in proceeding in this fashion, or have you given that matter any thought?

Mr. STANDING: I rather think I implied this in the questioning here a few moments ago in regard to whether the bank had title under section 88

of the Bank Act. So, I would have to agree it may be that is where the remedy would be most effective for us.

The CHAIRMAN: Are there any further questions of Mr. Standing?

Mr. MOREAU: I wonder if Mr. Standing on behalf of the producers' groups could perhaps also include some suggestions as to how this could be done. I appreciate the very far-reaching implications of the amendment to this bill and wonder if we could do the same thing without perhaps getting into very far-reaching matters.

Mr. OLSON: I would suggest there is some variation of interpretation as to where section 88 now applies in respect of grain. I would suggest that when we meet later on we have both the people from the bankers association and from the producers give us a fairly clear interpretation of what they think as to where it applies.

The CHAIRMAN: Are there any further questions which the committee would like to address to Mr. Standing? Thank you very much, Mr. Standing, for coming here today.

Would the committee now care to address questions to Mr. Whelan?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I gather, Mr. Chairman, that Mr. Whelan had some evidence he wanted to put in. I am wondering if that would be just as appropriate when we meet in the fall, or whether he feels it should come in now. I would be in favour of hearing him now if he feels it is important.

Mr. MOREAU: If Mr. Whelan has some evidence of abuse of the privilege granted to the bank under the Bank Act, he should present that evidence if possible perhaps at our next meeting.

The CHAIRMAN: Is it lengthy evidence?

Mr. WHELAN: No. It is a statement which was given to me.

The CHAIRMAN: Then perhaps you might come up and present it now.

Mr. LLOYD: The question would be, do you have any evidence, Mr. Whelan, of hardships arising under the provisions of section 88 of the Bank Act or other provisions of the Bank Act?

Mr. WHELAN: In answer to that, I have one letter from the British Columbia Federation of Agriculture. It says:

My board wish to add their support to your efforts through Bill C-5 to correct the iniquitous position that farmer suppliers usually find themselves in when the processor they are dealing with goes into bankruptcy.

In this province, on April 28, 1961, Visco Poultry Packing (1957) Ltd. ceased operations following being declared bankrupt. All assets were immediately seized by Imperial Bank of Canada under section 88 of the Bank Act. This resulted in 19 poultry farmers being unpaid for the birds they had delivered to the tune of \$76,582.52. One large producer lost \$14,390.70. The prospects of any recovery are nil.

In this case it seemed more than just coincidence that there should have been an especially heavy kill laid on in advance, just prior to the plant being closed, particularly in view of the fact that the president of the company was also the personal guarantor of the bank loan of some \$150,000. The bank, of course, seized everything including the freshly killed poultry, so did not need to claim on the guarantor.

It is our hope to forward you the particulars on two other like cases so that you can use them along with the above when your bill is before the banking and commerce committee.

The CHAIRMAN: With the permission of the committee I will have this marked as Exhibit No. 1.

Agreed.

Mr. WHELAN: I would like to say, Mr. Chairman, that I have numerous other groups who would like to bring evidence before this committee. These are producing groups of primary products and they were unable to be present today.

The CHAIRMAN: If you would permit me, Mr. Whelan, are there any further questions anyone would like to address to Mr. Whelan?

Mr. OTTO: No.

The CHAIRMAN: We are going to deal now with the procedure in the future.

Mr. LLOYD: Mr. Chairman, I would hope that Mr. Whelan would be available for any further questioning and, since he is a member of the house, I presume that he would be available and will be given the opportunity of being heard at a later time.

The CHAIRMAN: At the present time, gentlemen, are there any further questions you would like to address to Mr. Whelan?

Mr. KLEIN: Mr. Chairman, you have a motion.

The CHAIRMAN: Gentlemen, I wonder if before we adjourn, and as there are a number of other organizations who have expressed an interest in presenting their views to the committee, namely the Canadian horticultural society, the Canadian Federation of Agriculture, the Canadian credit mens association, the Ontario fruit and vegetable marketing board and others, totalling possibly 15, if next week the steering committee might meet to determine the order in which these might be heard as well as determining when the next meeting might be held.

Mr. THOMAS: I will so move.

The CHAIRMAN: Is it agreeable?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: We have had one other bill referred to us which, I believe, could be disposed of rather rapidly; it is the addition of a French translation to the name which was referred to us yesterday. If we are agreeable and at the call of the Chair we might have a meeting to deal with that one before the recess.

Mr. LLOYD: That would be the only one?

The CHAIRMAN: I would suggest the steering committee should draw up a schedule for the hearing of further representations and we shall resume the consideration of this bill after the summer adjournment.

Thank you very much, gentlemen; we will adjourn to the call of the Chair.

STANDING COMMITTEE ON BANKING AND COMMERCE

The following is the English translation of questions and answers in French on the date indicated.

FRIDAY, July 26, 1963.

(Page 21)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, could we have a French translation of the brief Mr. Whelan has just read?

The CHAIRMAN: Mr. Whelan did not produce it in French.

Mr. CÔTÉ (*Chicoutimi*): It is a most interesting document.

The CHAIRMAN: We could ask the Clerk's office to have it translated and to distribute copies when it is ready.

* * * * *

(Page 28)

Mr. CÔTÉ (*Chicoutimi*): Do bankers really take a lot of risks?

The CHAIRMAN: I am sorry but Mr. Gray has the floor. If you will be good enough to leave your name, we shall call you as soon as your turn comes.

* * * * *

(Page 54)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, thank you for allowing me to ask a few questions. Do the banks take a lot of risks when, considering the power they have with regard to monetary expansion, they only have to maintain a reserve of 8%, for example?

* * * * *

Mr. CÔTÉ (*Chicoutimi*): Why would Bill C-5 which is now being proposed oblige the banks to restrict their primary products and their production when in reality they have the power to create approximately 90% of their capital out of nothing?

* * * * *

Mr. CÔTÉ (*Chicoutimi*): The Minister of Finance (Mr. Gordon) stated in the House two days ago, that in eight years and six months, or since the end of 1954 up to July 3, 1963, the chartered banks in Canada have created the sum of \$5,248,000,000.

The CHAIRMAN: If you will allow me to interrupt you a second, Mr. Côté, I would suggest that, if possible, you should try not to stray from the subject under discussion. I fail to see any connection between your last question and Bill C-5. There may be a connection but I am not sure. I would point out that it is getting late so will you kindly keep to the subject of Bill C-5.

Mr. CÔTÉ (*Chicoutimi*): Do the banks actually consider they lose money when a client cannot pay the credit they have created to the extent of 90%?

* * * * *

(Page 55)

Mr. CÔTÉ (*Chicoutimi*): Exactly, Mr. Chairman, I have prepared my questions according to those asked before, and that is why I consider I have the right to ask them.

The CHAIRMAN: Well, could you get to the point.

Mr. CÔTÉ (*Chicoutimi*): Just one further question. Considering the exceptional privileges they enjoy, would it not be normal for the chartered banks to object to the presentation of Bill C-5 even if it involved somewhat greater risks?

* * * * *

The CHAIRMAN: I hope I have not dealt with you too harshly, Mr. Côté, but I did not get the meaning of your questions, at the time, and I did not see their connection with Bill C-5.

OFFICIAL REPORT OF PROCEEDINGS AND EVIDENCE

This edition of the Minutes of Proceedings and Evidence contains the text of Evidence in the language in which it was given, and a translation in English of the French texts printed in the Evidence.

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(HOUSE OF COMMONS
First session—Twenty-sixth Parliament)
(1963)

STANDING COMMITTEE

ON

NADA. **BANKING AND COMMERCE,**

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

(No. 2)

(FRIDAY, OCTOBER 18, 1963)

(Respecting

Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing))

(WITNESSES:

Mr. Lionel Sorel, 1st Vice-President, Canadian Federation of Agriculture and President of the Union Catholique des Cultivateurs; Mr. A. H. K. Musgrave, President, Ontario Federation of Agriculture; Mr. Gilles Ledoux, Secretary, Quebec Tomato Growers Association.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Jewett (<i>Miss</i>),	Pilon,
Boulanger,	Kelly,	Ryan,
Cameron (<i>Nanaimo-</i>	Kindt,	Rynard,
<i>Cowichan-The Islands</i>)	Klein,	Sauvé,
Chaplin,	Lloyd,	Scott,
Chrétien,	Macaluso,	Skoreyko,
Côté (<i>Chicoutimi</i>),	McLean (<i>Charlotte</i>),	Tardif,
Douglas,	Monteith,	Thomas,
Flemming (<i>Victoria-</i>	More,	Thompson,
<i>Carleton</i>),	Morison,	Vincent,
Gelber,	Muir (<i>Lisgar</i>),	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTION (English copy only)

Proceedings No. 1—Friday, July 26, 1963.

In the Minutes of Proceedings and Evidence—

Page 40, 5th line from the bottom and following should read:

... notifying the borrower under section 88. 'We have the right to dispose of these goods as we see fit—I am reasonably sure that I am correct on that, but at all times we are conscious of the importance of getting the best price for these goods. We may find, when we step in, that perhaps 30 or 35 per cent of the inventory is in process. We will expend additional funds to complete these ...

ORDERS OF REFERENCE

WEDNESDAY, October 16, 1963

Ordered,—That the name of Mr. Whelan be substituted for that of Mr. Emard on the Standing Committee on Banking and Commerce.

Attest.

Léon-J. Raymond
The Clerk of the House

REPORTS TO THE HOUSE

JULY 5, 1963

The Standing Committee on Banking and Commerce has the honour to present the following as its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;
2. That its quorum be reduced from 15 to 12 members and that Standing Order 65(1)(d) be suspended in relation thereto.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

JULY 11, 1963

The Standing Committee on Banking and Commerce has the honour to present the following as its

THIRD REPORT

Your Committee recommends that it be authorized to sit while the House is sitting.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

(NOTE: The Second Report deals with a Private Bill in respect of which Proceedings were not published.)

MINUTES OF PROCEEDINGS

FRIDAY, October 18, 1963.

(10)

The Standing Committee on Banking and Commerce met at 9:15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gray, Grégoire, Habel, Kelly, Kindt, McLean (*Charlotte*), Moreau, Muir (*Lisgar*), Olson, Pascoe, Pilon, Ryan, Rynard, Scott, Thomas and Whelan—(22).

In attendance: Mr. Lionel Sorel, 1st Vice-President, Canadian Federation of Agriculture and President of the Union Catholique des Cultivateurs; Mr. A. H. K. Musgrave, President of the Ontario Federation of Agriculture; Mr. Gilles Ledoux, Secretary, Quebec Tomato Growers Association.

The Chairman reported that the Subcommittee on Agenda and Procedure had met on Thursday, October 8th, and agreed to recommend that the Committee hold regular sittings on Friday mornings at 9:00 a.m. to hear briefs in connection with Bill C-5 and to consider any other matters which may be referred to it by the House.

On motion of Mr. Moreau, seconded by Mr. Habel, the above mentioned report was adopted.

On motion of Mr. Thomas, seconded by Mr. Armstrong,

Resolved,—That the quorum of this Committee be reduced from 12 to 10 members.

In the absence of French shorthand reporters, the members agreed that the interpretation of questions and answers in French be regarded as part of the official record.

The members resumed consideration of Bill C-5, An Act to Amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced the witnesses and welcomed them to the meeting.

Mr. Musgrave read a brief prepared by the Canadian Federation of Agriculture and was questioned, assisted by Mr. Sorel and Mr. Ledoux.

On motion of Mr. Scott, seconded by Mr. Gray,

Resolved,—That the papers appended to the brief of the Canadian Federation of Agriculture be printed as Appendices to the Minutes of Proceedings and Evidence. (*See appendices A, B, C.*)

Mr. Sorel thanked in French the members for their courteous reception of the brief.

On behalf of the members, the Chairman thanked the witnesses for coming and presenting their views to the Committee.

At 11:00 a.m. the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, October 18, 1963.

The CHAIRMAN: I believe I see a quorum, gentlemen, so we will call this meeting to order.

The first item of business is the report from the subcommittee on agenda and procedure, which took place some few days ago. The subcommittee on agenda and procedure met on Thursday, October 8, and agreed to recommend that the committee hold regular sittings on Friday mornings at 9 a.m. to hear briefs in connection with Bill C-5 and to consider any other matters which may be referred to it by the house.

In this connection may I say that the only time available was 9 o'clock on Friday mornings. We will hold these weekly until we have exhausted the business that is to come before the committee. The subcommittee has indicated that if the pressure of business becomes great they will leave it to the Chair to call other meetings and to try to speed up matters. However, for the present we will hold one meeting a week.

Is there a motion to approve the recommendation of the subcommittee?

Mr. MUIR (*Lisgar*): Before we approve this I think it would be more convenient, if we have time to do the business of the committee, to meet at 9:30. I personally was held up ten minutes this morning at one of the bridges and it is now 9:15, and we have only just obtained a quorum. I think 9:30 would be more convenient for most of the members.

The CHAIRMAN: This subject was discussed by the subcommittee on agenda and procedure and it was thought that we only had two hours because we sit on Friday mornings at 11 o'clock, and to the extent that it is possible we hoped we would not be sitting while the house was in session; and we agreed to adjourn at 11 o'clock; if there were still questions to address to witnesses we would ask them to come back during the afternoon so as to terminate hearings and not to impose too great a hardship on them. Many of them, as you know, come from great distances.

We might at the same time make a motion to reduce our quorum requirements to ten, although I must say that today's situation is a little extraordinary because several groups had to leave parliament hill last night for various pre-arranged engagements today, and this might not be repeated every Friday.

Mr. THOMAS: I move, Mr. Chairman, that we reduce the quorum to ten and meet on Friday at 9.

Mr. ARMSTRONG: I second the motion.

The CHAIRMAN: Possibly, Mr. Thomas, you might move the adoption of the report of the subcommittee on agenda and procedure in connection with the time and date of the regular meetings, and then we could have another motion on the quorum after we have adopted that.

Mr. MOREAU: I make that motion.

Mr. HABEL: I second it.

The CHAIRMAN: It is moved by Mr. Moreau and seconded by Mr. Habel. Are you ready for the question? All in favour?

Motion agreed to.

It is now moved by Mr. Thomas, seconded by Mr. Armstrong, that the quorum be reduced to ten. Is there any discussion on the motion? Are you ready for the question? All in favour? Contrary minded?

Motion agreed to.

Gentlemen, it gives me a great deal of pleasure to welcome here today the representatives of the Canadian Federation of Agriculture. We have their president, Mr. A. H. K. Musgrave.

Mr. A. H. K. MUSGRAVE (*President, Ontario Federation of Agriculture*): No, I am president of the O.F.A.

The CHAIRMAN: Would you consider that a promotion or a demotion?

Mr. MUSGRAVE: You are promoting me. We have here the first vice-president, Mr. Sorel.

The CHAIRMAN: Then, we have Mr. Musgrave, the chairman of the Ontario Federation of Agriculture, the gentleman who spoke a moment ago, and on his left we have Mr. Lionel Sorel, président, Union Catholique de Cultivateurs. On his right nous avons Monsieur Ledoux, le secrétaire production spécialisée de U.C.C., Union Catholique de Cultivateurs. It gives me a great deal of pleasure, gentlemen, to welcome you here today.

I understand that Mr. Musgrave will be reading a brief in connection with the consideration of Bill C-5, to amend the Bankruptcy Act.

Mr. Musgrave, would you care to present your brief to the committee now?

Mr. MUSGRAVE: Mr. Sorel is leader of our delegation because of his position as vice-president of the Canadian federation, and I wonder if he would like to say anything first.

Mr. LIONEL SOREL (*President, Union Catholique de Cultivateurs*): No.

Mr. MUSGRAVE: This submission is by the Canadian Federation of Agriculture, Mr. Chairman and gentlemen, to the standing committee on banking and commerce, and the subject is Bill C-5, and Act to amend the Bankruptcy Act.

May we first express our appreciation of the opportunity being given to the Canadian federation of agriculture to appear before this committee. It is a privilege that is very much appreciated.

This submission in support of Bill C-5 is made on the instructions of the board of directors of the Canadian federation of agriculture, who fully support the intent of the amendment to the Bankruptcy Act which has been introduced by Mr. Whelan and given approval in principle by the House of Commons.

This will not be a long or complex submission. Our representations are concerned with the application of the amendments to farmers. The position, quite simply, is that the farmer, who often delivers the product of a year's work to a plant, should be in the position of a preferred creditor in case of bankruptcy. The position was put well and forcefully in a letter received by the Ontario federation of agriculture from one grower who suffered loss in bankruptcy in 1962 of Graham Products Ltd. This man said:

I would like to voice my opinion very strongly on the Bankruptcy Act. It is a very unfair practice that the banks are allowed to sell my produce, which has been unpaid for, and the government upholds them.

I have lost approximately \$13,500 on account of Graham food going into receivership on my peach crop. It is not only the loss of payment, but loss of a year's work and the cost of harvesting same, which would amount to \$7,000 in the least.

Farming is a considerable risk at any time without having the banks (backed by the government) take my crop and under Section 88 I am unable to redeem my loss.

Why is such an underhand policy allowed when the bank knows and plans to foreclose before this produce has even been delivered, leaving a farmer in financial difficulties?

This seems to us to sum up the situation very well. There is of course the charge contained in the last paragraph respecting the nature of the activities of the bank concerned. It is perhaps expressed in a form more extreme than is correct or than could be firmly proved. A few sentences from a report on the same situation by the Ontario tender fruit growers' marketing board, however, gives the kind of facts that lead to such opinions being held by farmers. The report is dated July 22 of this year.

Since November 27th (the date of going into receivership) the receiver has been liquidating stock at a normal rate at market prices and it would appear that had purchases of fruit and vegetables been kept to a normal amount—that is, purchased by Graham food—and the bank had not stepped in that the company could have still been operating. At the time of placement in receivership there was a book deficit on the company's financial statement of \$122,074 over total assets of \$1,676,030. The bank loan was \$1,376,514 on an inventory of \$1,340,657 so that it seems that the bank had made a serious error in making such a large loan to the company even if it did have good security.

To the above information must be added the following facts. In January, 1963, a letter to creditors stated: "Severe operating losses in 1961—we have made the underline here; it was not in the letter—and 1962, which amounted to nearly \$200,000 in each year placed the company in a precarious financial position." The previous August the bank concerned wrote to a dealer: "The above named (Graham Food Products Ltd.) have carried a satisfactory account at this bank for the past three years. While they are carrying a fairly heavy inventory which to some extent cramps their working capital position, we consider them a reasonable risk for their normal business requirements."

Those are the two letters that we were comparing there.

The marketing board memorandum concludes:

At time of writing, the affairs of the company are still being managed by the receiver and growers can only watch the use of their fruits and vegetables to partially satisfy the claims of other creditors who by law are in a preferred position.

Some \$100,000 was lost by growers in this particular case. We think it illustrates very well why the present law should be changed.

The heart of the problem of course lies in the question of the effects on industry, including agricultural producers, of this amendment. Will it disadvantage producers through restricting the availability of credit to the point where outlets for their product are not available to the extent they should be? Or, will it result in undesirable reduction of competition through elimination of small plants? We contend that fair treatment for the banks is not an issue of any significance in this instance. We think it should be pretty clear that the banking system is not threatened by this amendment, and the banks are perfectly capable of protecting their security and profits, and limiting their risks to a proper level.

The issue, we repeat again, is whether the producers whom the amendment is designed to protect are in fact asking for the right thing in their interests. It extends perhaps to the question of whether the amendment unreasonably restricts the opportunities for commercial activity of potential and existing processors and the people employed in those plants. It does not extend to the question of fairness to the banks. In this matter, they can take care of themselves whichever way it goes.

By the amendment, section 88 of the Bank Act is not eliminated. The effect of its provisions is merely limited. The nature of the limitation is that no longer will farm produce, delivered but not paid for, be available as security for the banks on loans to the purchaser of that produce. The amendment of course does more than this. It also gives a preferred position to the farmer over other suppliers, in the same way that the wages of workers are in a preferred position.

Our submission is that this is a right and proper course to follow. The vulnerability of the individual farmer to losses arising out of the bankruptcy of the processor to whom he sells his produce is very great, and very serious. Such a loss can often ruin the farmer. If it does not ruin him it can mean the loss of his work for a year plus the acquisition of a new burden of indebtedness for farm costs incurred in producing the crop. Even if less than a year's work is involved, his livelihood is directly and damagingly affected. In short, the farmer cannot afford, and should not be expected to afford, the risk of such losses.

If it is argued that in the absence of the full opportunity to utilize section 88 there will be plants that will not be able to get into business, to the disadvantage of the farmer through loss of outlets for his produce and reduced competition for this product, we reject this argument in principle. We do not really think it is in the interests of the farmer or the industry to look to plants that cannot operate except by making the farmer stand security for the processor's bank loans. We would think a healthier food industry should result from the loss of this particular opportunity.

The banks suggest that this is a foot in the door to elimination of the section 88 security altogether, to the detriment of commerce in this country. We are not prepared at these hearings to argue the value and propriety of section 88 in all its aspects. In response to this argument we would only say that the amendment before us does not necessarily envision such as extension to other types of creditors. The usefulness of section 88 can be argued in a more general way at other times.

Besides, our submission is not just against section 88. It goes beyond that. It is that the farmer should be a preferred creditor over other creditors in case of bankruptcy, for reasons the same as those protecting the worker's wages. As with every rule there will be anomalies in the application of this one. There will be small businesses, local suppliers, as vulnerable as the farmer. There will be farmers who for particular reasons are not especially vulnerable compared to other creditors. But broadly speaking we submit that the case for a preferred position, after that of the wage-earner, is a valid and equitable position to give the farmer.

We recognize also that the amendment goes beyond the producer of farm products in its application. We are representing here the farmer and small woodlot operator (who is typically also a farmer). We claim no knowledge of the position or problems of other groups although we would think the position of the fisherman would in most cases be very similar.

Bankruptcies do not happen very often. But this is not a case against the amendment. If anything, it is a case for it. The small number of bankruptcies is evidence that the economy is not in such a position that recourse to the

protection of section 88 is vitally and frequently necessary. At the same time, the infrequency of these bankruptcies in no way reduces the seriousness to the individual farmer of being caught up in one.

In terms of actual case histories, we do not have a large dossier to present to this committee. The case of Graham Food Products has been mentioned. The case of Visco Poultry Packing (1957) Ltd. of British Columbia has already been placed before the committee. We would mention also, particularly, the recent case in Quebec of J. J. Joubert & Fils Ltee. where 278 producers of vegetables lost \$51,905, and the case of Les Abattoirs Richelieu Inc. in which 70 farmers lost \$154,000. There have been a number of other cases that could be mentioned as having occurred during the last 15 years in Quebec.

You will I believe be getting further information from particular Ontario groups.

Attached to this submission are some notes on the bankruptcy of Graham Food Products prepared by the Ontario Tender Fruit Growers' Marketing Board and quoted in part in this submission; the letter from the British Columbia federation of agriculture which has already been placed in the record before this committee; and a letter to the Tomato Producers' Board in Quebec from its counsel, advising it of the hopelessness of the case of J. J. Joubert and Fils Ltee., and recommending that they resign themselves to the loss.

I would like to mention at this time that Mr. Sorel, who is present, on three occasions has been victimized by this same bankruptcy procedure.

The CHAIRMAN: He looks remarkably healthy in spite of that.

Thank you very much, Mr. Musgrave. I would at this time request that the witnesses answer any questions on the brief which the members of this committee may care to direct to them. As I mentioned earlier, Mr. Sorel, Mr. Musgrave and Mr. Ledoux are your witnesses this morning.

Mr. MUIR (*Lisgar*): Mr. Chairman, I have a question which I would like to put at this time. Would the placing of any limits on section 88 of the Bank Act tend to limit the credit that would be ordinarily extended to processors for the carrying on of their work.

Mr. MUSGRAVE: Did you say would that limit the processors in carrying on their work?

Mr. MUIR (*Lisgar*): By putting on any limit that we would in respect of section 88 of the Bank Act would that tend to limit the credit that the bank would be willing to offer the processors.

Mr. MUSGRAVE: That would be a matter for the banks to decide. As far as I am concerned, and the people I represent, we object to having a processor operate on our credit, which is what is happening. If a processor is in such a weak position that the only way he can operate is by using value owned by other people, and those other people have no share in any earnings he may make, we object.

Mr. MUIR (*Lisgar*): Well, in that case, sir, assuming that it does limit the credit which the banks or other lending companies would be willing to offer to the processor, would you think it desirable to add a further amendment making it mandatory that any processor handling primary products be bonded to an extent depending on the capacity of the processing plant?

I cite as illustration Manitoba where they made it mandatory for hatcheries and eviscerating plants to be bonded depending on the capacity of the hatchery and of the plant, from \$2,000 up to \$4,000, and again up to \$5,000. Could this same principle not be extended to other industries so that at any time the amount of produce that a plant held would be covered by a bond? I mean, this would be on top of the amendment that we have here. Do you not think it would be desirable?

Mr. MUSGRAVE: I believe, Mr. Chairman, and gentlemen, that the meat processing plants in Ontario do have such a bond. I know that a trust fund is set up so there is always money there to pay for the delivery of products.

Mr. MUIR (*Lisgar*): Do you not feel it would be desirable, let us say, for fruit processing plants and canneries which deal with primary products, to be bonded?

Mr. MUSGRAVE: That is possible, sir. But that is not exactly what we are asking. However, it is possible.

Mr. MUIR (*Lisgar*): I think it would cover the same thing without limiting the amount of credit that the processor may be able to get.

Mr. MUSGRAVE: I would not agree to that as a substitute.

Mr. MUIR (*Lisgar*): No, but it could be added to it; that is, in addition. I think your axe would be getting double protection, and it would perhaps be adding more protection for everyone, including the processor himself. I just wish to throw this suggestion out to you, because I think it is something that we should consider when looking over this amendment.

The CHAIRMAN: Thank you, Mr. Muir. Before we go on, I wonder if I might have a motion that the notes which are appended to the submission made by the Canadian Federation of Agriculture, I mean the notes concerning the bankruptcy of the Graham Food Products be printed as an appendix in the report?

It has been moved by Mr. Scott and seconded by Mr. Gray.

Motion agreed to.

Mr. SCOTT: I realize that you are here only to represent a particular group in the community, and that you are presenting your position alone. But what disturbs me about the submission is this: it seems to me that you are asking us to accept a very new principle, and while this might be granted and be beneficial to you, are you not in danger or upsetting the whole basis on which commerce operates, so that the next thing we will have will be the building suppliers wanting similar protection? It seems to me that the line taken here is one which, if accepted in principle, is entirely opposite to the whole concept of business on which all commerce operates. What consideration has your group given to the ultimate consequences of a widespread acceptance of this principle?

Mr. MUSGRAVE: Our contention is that business people are in a much better position to assess the financial position of the people to whom they make deliveries than are farmers; our contention is that farmers are more nearly in the position of the labouring man, and at present the labouring man is regarded as needing this protection.

One other thing, in the event of a bankruptcy, where a tradesman has extended credit and is losing, it is usually a small part of the operation of that particular person. But where a farmer is delivering perhaps a year's products, under contract sometimes, to one processing plant, then his whole year's business may be gone. We think that makes a lot of difference.

Mr. SCOTT: I do not agree with you there.

Mr. MUSGRAVE: And may I say just to elaborate a little further, in anticipation of the suggestion in our brief, that this bankruptcy thing does not happen very often; neither does murder happen very often; but it is a very important sort of thing to the "murderee". So just because it does not happen very often we do not say that we should not bother about it. We still have pretty strict laws about it.

Mr. SCOTT: The fact that it does not happen very often is one of the main reasons for not accepting the principle. I feel it is pretty dangerous.

The CHAIRMAN: Now, Mr. Sorel.

Mr. LIONEL SOREL (*President of the Union Catholique de Cultivateurs and first vice-president of the Canadian Federation of Agriculture*): I would like to say a few words in French.

(Text of Statement not recorded).

The CHAIRMAN: Gentlemen, something has just been drawn to my attention. I think you had better repeat your remarks in English because we do not happen to have a reporter taking French this morning. He was asked for and he should be here. Has anybody any suggestions?

Mr. GELBER: Is there an interpreter present?

The CHAIRMAN: No, there is no interpreter either. I wish to apologize to our witnesses this morning for this happening. I wonder if the clerk could get in touch with the appropriate people right away.

Mr. GELBER: If he would care to summarize his remarks in English, it would be appreciated.

The CHAIRMAN: Mr. Sorel has offered to speak in English in this particular instance.

Mr. GRAY: There are others here who could translate for our colleagues.

The CHAIRMAN: Thank you. And I myself would be glad in future to do this for you.

Mr. LEDOUX: What Mr. Sorel said is that when a processor or a cannery goes to the bank to get credit he very often has to prove that he has a certain number of acres on contract for the coming crop. At that moment all those contracts which have been signed by the producers bind those producers to deliver their produce to the processor, and the usual way is to pay for this produce at the beginning of November or December. These payments are made on produce which has been delivered in June, July, August and sometimes even in September. Therefore, when the processor goes to the bank to get credit, the grower is not in a position to know the financial position of the processor with whom he is under contract. I think that would generally summarize it.

The CHAIRMAN: In any case, Mr. Ledoux if you wish to speak in French I would be glad to translate it.

Mr. MOREAU: There was another point made, Mr. Chairman, that the financial position of the processor might change in the interval between the time when the contract was signed and before the payment would be due, so that the processor would have no opportunity to learn of the change of position, and even if he learned it it would not be any good because he had signed his contract.

Mr. OLSON: I would like to pursue the actual practice of using this protection under section 88 of the Bankruptcy Act. In the submission that was made by the Canadian Federation of Agriculture spokesman I find that he says he had not many case histories to present to the committee. In the case of Graham Food Products Limited, the fact is pointed out that the bank loan was \$122,000 above the total assets of the company, the bank loan, of course, being protected under section 88 of the Bankruptcy Act. I wonder if this same over-extension of credit applied also in the case of the 278 producers who lost \$51,000 to the J. J. Joubert and Fils Ltee., and also the 70 farmers who lost their produce to Les Abattoirs Richelieu. Was there over-extension of credit in both of these cases as well?

Mr. LEDOUX: In the case of J. J. Joubert and Fils I would say there was.

Mr. OLSON: Would you say that in practice the banks have in fact over-extended credit to the processors under the protection of this act, in most of the cases where bankruptcy has been declared?

Mr. LEDOUX: You mean in Quebec?

Mr. OLSON: Generally.

Mr. LEDOUX: I would say, yes.

Mr. OLSON: Well then it would seem that perhaps the producers would be better off even in so far as marketing their crops was concerned if there was no protection under section 88 because then there would be no possibility of the bank over-extending credit to keep them in business to accept their produce.

Mr. MUSGRAVE: I would not say that, sir. I have no objection to section 88 applying to that part of the inventory which is paid for. What I object to is section 88 applying to my produce that has been delivered and is not paid for. That is using my credit to support the processor.

Mr. OLSON: This is exactly the point I am making, that because of the present provisions of section 88 the banks have, in some cases, kept the processor in business after his liability has exceeded his assets, and accepted more produce from the producers which was actually used, at least we can suppose, when this process was used to build up an inventory, to protect some previous loan.

Mr. MUSGRAVE: That is right. If the bank had recourse to whatever part of the inventory had been paid for and no more, then the bank would not have any object in allowing a processor to remain operating when he was insolvent.

Mr. SOREL:

(Text of comment not recorded).

The CHAIRMAN: Mr. Sorel says he feels that the producer also makes great efforts towards giving credit to the manufacturer, and this is done voluntarily and freely. He feels that this is a sufficient effort on the part of the producers, and that while this is done freely and voluntarily he does not see why the fact that he does this should give the processor the right to use the credit which he is giving him to pass on to someone else and create another credit. He says that this effort of giving credit to the manufacturer is done between the time that his product is delivered and later in the fall. He drew our attention to the fact that he produces fruits and vegetables and that he has not yet received one cent although they were delivered a few months ago. He is convinced at the present time that some of the beans that he has produced have now been consumed by the eventual consumer and yet he has not been paid. He feels this is an abnormal situation.

Mr. OLSON: I have one other point. From the case history of Graham Food Products it is quite obvious that when the bank loan was \$1,376,000 against total assets of \$1,676,000, that this is not in keeping with normal banking practice. I think it would be very useful to the committee if the federation would undertake to give us the case history respecting these other two bankruptcies that they have drawn to our attention to see if there is a similar pattern of over-extension of credit with a view to building up inventory to protect a bank loan that has been made previously to acquire that inventory. I wonder if they would undertake to provide us with this information?

Mr. MUSGRAVE: We can do that, sir.

The CHAIRMAN: Mr. Pascoe?

Mr. PASCOE: My questions have pretty well been answered by Mr. Sorel. As a western grain grower I was interested in information in respect of partial cash payment with regard to delivery, but I understand that is not the way it is worked here. You mentioned growers delivering under contracts. You might explain whether the processor pays any of the operating costs in respect of producing the crop?

Mr. SOREL: No. Sometimes they do provide the seed for peas or something like that; sometimes there is the seed.

The CHAIRMAN: May I inform the committee and our witnesses that we now have the services of an interpreter, although we do not yet have a French reporter.

Mr. MOREAU: We might accept the translation as part of the official record and can probably get over the hurdle in this way.

The CHAIRMAN: Thank you. Will you proceed, Mr. Pascoe?

Mr. PASCOE: I have finished.

Mr. SOREL (*Interpretation*): It has been said that there are very few bankruptcies. Actually, there are very few in the strict sense of the word, but we do have quite a few cases where the producer will accept any kind of a settlement rather than go into bankruptcy. For instance, you may have beans which will sell for \$100 per ton, and a person would accept \$70 if it is offered to him. In fact, I have done this myself. In other words, the producer will accept any kind of a settlement rather than go into a receivership.

Mr. GELBER: Mr. Chairman, I do not know how familiar the witnesses are with the details of the Graham Products failure. Do any of the witnesses know whether the bank had a personal guarantee from the principals of this firm?

Mr. MUSGRAVE: I do not know that.

Mr. GELBER: If it were so, the bank and the debtor would have a common interest in building up unpaid inventory. That would be a very interesting thought which we might try to find out, Mr. Chairman.

Mr. MUSGRAVE: The bank and the guarantor?

Mr. GELBER: The principals, the debtors. Mr. Chairman, we have had a very interesting idea put before this committee; that is, that unpaid inventory not be subject to section 88. I understand the witnesses say they would be satisfied if that were so. That would be a very interesting principle to extend to section 88 generally; that is, that buyers who had not been paid have their inventory not subject to section 88, except that portion which is in process. It would be hard to segregate. It would make this bill even more significant if that idea became part of the Bankruptcy Act. I wonder if the witnesses would like to comment on that. I would think this is a particularly interesting proposition.

Mr. KINDT: It is your thought that this would be on the first assets of the business?

Mr. GELBER: I just thought the committee might be interested in this idea in view of its work next year in connection with the Bank Act. Is it not a fact that in the province of Quebec there is a certain protection in respect of goods delivered within 30 days of bankruptcy?

The CHAIRMAN: Yes; in many fields. For instance, I think it is 30 days in connection with building materials. There are other fields in which the delay is longer. It has to be registered; it is a different system.

Mr. MOREAU: I have had some experience with this 30-day provision in the province of Quebec. Before you find out you are not going to be paid, the 30 days are up in some cases.

The CHAIRMAN: Mr. Musgrave, would you like to comment on Mr. Gelber's remarks?

Mr. MUSGRAVE: Mr. Chairman, I would say we are not taking that position. We are saying that the farmer's position should rank next to labour. This is a very interesting suggestion. I would like to think about it further. I am not prepared to say now that we would accept that. We say that the working man who depends on his week's wages is entitled to protection; this is recognized by our law and our system. We say that the farmer should rank next. It is interesting to hear that in the province of Quebec the

person who delivers building supplies has a nominal 30 day protection. I understand the farmer does not even have that.

Mr. GRAY: This discussion is interesting, but I doubt it is relevant to the terms of the bill.

Mr. GELBER: I just put forward a suggestion. I would like to ask another question now.

We had a submission by the Canadian Federation of Agriculture; we had a submission by the Canadian Bankers' Association. They are not dealing with the same problem. The Canadian Bankers' Association told us that section 88 in effect means that the processing industry generally has more support from the banks and therefore can provide a better service to the farmers, and that this means the farmers do not have to deliver to too few processors and have a more competitive area in which to sell. The federation of agriculture tells us of individual cases where by reason of this situation individual suppliers suffered. Do the witnesses feel they are gaining as an industry by section 88 in spite of the fact that individual suppliers may suffer?

Mr. MUSGRAVE: I think, Mr. Chairman, that we are putting forward the principle that the farmers' credit should not be used to bolster a processing industry which otherwise could not operate. We are saying we do not think it is of any advantage to us to maintain processors who otherwise could not operate and would not exist. Does that answer the question?

Mr. GELBER: Yes.

The CHAIRMAN: Mr. Kindt, do you wish to ask a supplementary question?

Mr. KINDT: Yes, Mr. Chairman. If I understood Mr. Musgrave's position and the position of the federation of agriculture, what you are attempting to do, as stated in this brief, is to first of all, establish a principle that a producer or farmer is not in a position to know—.

The CHAIRMAN: Mr. Kindt, excuse me for interrupting. I will put your name down here as wishing to ask questions, but your question is not really supplementary. You are discussing the whole question.

Mr. KINDT: I will wait my turn.

Mr. GRAY: Mr. Chairman, I should like to ask Mr. Musgrave whether he really agrees with the contention of one of the other members of this committee that this is a new principle that is being suggested in view of the fact that there is already a similar privilege granted under the Bankruptcy Act to wage earners?

Mr. MUSGRAVE: I would say, sir, you could not say that it is a new principle. As you pointed out, this privilege is already extended to wage earners. We feel what we are suggesting is an extension of that principle to people who are in a very similar position.

Mr. GRAY: Would you also agree that there is already the same principle found in much provincial legislation, particularly in the province of Ontario where building suppliers have a mechanics lien protection? Would you agree with that suggestion on my part?

Mr. MUSGRAVE: Yes. I am not too familiar with the mechanics lien legislation but I know something about it and I know it is in existence.

Mr. GRAY: In effect they are given the same privilege because they are supplying building materials.

Mr. MUSGRAVE: Yes.

Mr. GRAY: I am perhaps now referring to a legal question but I should like to suggest that the witness who felt it would be useful to add a further

amendment to cause these processing plants to be covered by a bond is perhaps suggesting something rather difficult because this involves something that is not within federal jurisdiction.

Mr. MUSGRAVE: You are asking me a question that is beyond my ability to answer. I think, as you suggest, that is a question of law.

Mr. GRAY: Yes, and as a lawyer I was raising the question. I was just throwing this suggestion out to the committee at this point.

The CHAIRMAN: Would you suggest, Mr. Gray, that this be referred for opinion to the law officer of the crown?

Mr. GRAY: I am not referring to this bill in any way. I am of the opinion that the bill itself is clearly within the competence of federal parliament. I am just raising the question at this point for the edification of the committee.

The suggestion of bonding processing firms is first of all not something that can be legitimately added to this bill which is an amendment to the Bankruptcy Act. Secondly, bonding an individual processing firm operating within provincial boundaries might not be within the legislative competence of our parliament. I am just making this suggestion to keep this discussion in perspective. It is a useful point which has been raised by Mr. Muir, but I wanted to make this comment at this time.

Would you agree or disagree, Mr. Musgrave, that the continuation of the present terms of section 88 encourages bank officers to engage in sloppy practices in granting credit to processors?

Mr. MUSGRAVE: Mr. Chairman and gentlemen, it would seem that that situation does supply an additional cushion. I cannot say, and I have no way of knowing whether that actually happens. I have no way of proving this.

Mr. GRAY: From observation it would appear that it does happen?

Mr. MUSGRAVE: If I were a bank manager and knew that I could protect my operation by seizing goods delivered but not paid for and that I would never have to pay for them, I think I might be a little easier in granting credit. I have no doubt that bankers are much smarter than I am and perhaps would not do that. Being the kind of person I am, I would probably do that.

Mr. GRAY: Your charitable comment I am sure should be appreciated by the bankers.

In closing my questioning, I would suggest to members of this committee who have not already done so that they read the evidence, especially the cross examination of the representatives of the banks who appeared before us before the adjournment. That evidence is very useful, I assure you. Thank you Mr. Chairman.

Mr. MUIR: Mr. Chairman, since my suggestion was commented upon, I think perhaps I should be allowed to say a word or two in this regard.

It would seem to me that there must be regulations under the Federal Department of Agriculture that would have to do with the bonding of certain processors operating under federal jurisdiction. While we can only suggest to the province that this would be desirable, I would like to know that some research was being made in this regard.

The CHAIRMAN: I think it is perfectly in order for us to discuss alternatives in the committee here. I think all Mr. Gray was pointing out was that if the federal government wanted to do something in that direction this might be something within the jurisdiction of the provincial governments.

Mr. MUIR: I thought Mr. Gray's suggestion was good and I agree that we should follow this through in an attempt to find out the extent to which bonding can be handled by federal authorities.

Mr. CHAIRMAN: Would this committee be interested in having an opinion from the law officer of the crown in respect of the point raised by Mr. Gray?

Mr. MUIR: That might be useful, Mr. Chairman, and it might also be useful to call the deputy minister of agriculture of the federal department who deals with these matters. He may well have something to contribute.

The CHAIRMAN: Thank you Mr. Muir.

Mr. SCOTT: Mr. Chairman, I wanted to ask Mr. Muir if he could give us any opinion in respect of whether, when these processing plants apply for bank credit, the products that are given by the farmer form a very substantial part of the assets that are pledged to the bank?

Mr. MUSGRAVE: Mr. Chairman, I have not seen an application form which would be filled out by a processor when applying to the bank for credit. In some cases where a processor has a contract with a number of large producers, the product to which you have referred may well form a large part of the assets. There may not be very much in the way of liquid assets involved other than the product either in its raw or processed form.

Mr. SCOTT: You say also that the farmer enters into what is in effect a future contract, is that right?

Mr. MUSGRAVE: That is right.

Mr. SCOTT: And I understand this is also used as security?

Mr. MUSGRAVE: That is correct, sir, so that the farmer from the time he puts the seed in the ground is obligated to deliver a certain tonnage per acre from each acre that is under contract to that processor.

Mr. SCOTT: Would that mean that if the processor went into bankruptcy the farmer would have to deliver his products to a bankruptcy company?

Mr. MUSGRAVE: That is the way the act reads. It does not say you would have to do that, because once a company is bankrupt I suppose you would not do that, but that is certainly part of the credit available to the processor. I do not think I would ever deliver a product to a bankrupt company.

Mr. GRAY: You might be obliged to do so.

Mr. SOREL (*Interpretation*): There is no exception to the rule. We are obliged to deliver the product.

Mr. MUIR: I think a bankruptcy might well be timed so as to take place after the crop was in but before it was sold.

Mr. MUSGRAVE: You said that. I did not say that.

The CHAIRMAN: Mr. Kindt, I am sorry you had to wait so long.

Mr. KINDT: That is fine, Mr. Chairman, I must leave for another meeting very shortly.

Mr. Musgrave, does it depend upon the terms of the contract and how it is written, when the primary producer receives periodic payments for his products, and whether or not at that particular point in the transaction between the producers and processors there could be perhaps some looseness which could be tightened up to at least partially look after the situation? I realize and agree that the producers are operating in the dark and know nothing of the financial positions of these corporations to which they deliver their product, but what you are asking for is protection? In so far as that is concerned, I very much agree.

Could you answer the first question?

Mr. MUSGRAVE: I will try, Mr. Chairman.

The producer is prepared to extend credit over a time period to the processor so that he may process the product, sell it and start getting some income, so quite often the producer does not ask for a down payment. That is correct, is it not?

Mr. LEDOUX: Yes, it is.

Mr. SOREL: Yes.

Mr. KINDT: In principle, should the primary producer be extending credit to the processor? That is the function of the bank. That is the function of some lending agency. It seems to me that under our banking act there should be some trust fund or some revolving fund to protect creditors. If you put money in the bank you are protected on your deposit. It seems to me that perhaps we should take another look at some of the methods which are being used to make the producer—manufacturing more operative under our system of *caveat emptor*—in other words, let the buyer beware when it comes to purchasing something. What is now in effect is let the seller beware. What you are saying is that the seller cannot beware because he does not know anything about the financial situation of the corporation.

Mr. MUSGRAVE: The producer has one market. All his product goes to that market. To secure that market he must find a contract in many cases. When it comes to delivering, he does not have much option, does he?

Mr. KINDT: None at all.

Mr. MUSGRAVE: It would seem to me that the producer is acting wisely when he extends time to the processor.

You are suggesting, as I understand it, that the producer should say to the processor that unless he can pay some cash on this day and more cash on this day, he will not deliver. I think we would unduly restrict business by taking that attitude, and we are not taking it. We are taking an attitude very similar to that taken by the wage earner, the labouring man. We do not want our credit used to bolster the processor's credit. We do want to be ranked next to the wage earner in securing the product of our labour.

Mr. MUIR (*Lisgar*): May I comment on that one thing?

I think that type of contract puts the farmer in a terrible position and that the credit these people need ordinarily would go to the producer for a first payment, a down payment, on his produce. I know that is the situation used out in Manitoba among the sunflower growers and other crop producers. They sign the contract to deliver to the processor but in the contract it is stated that an initial payment will be made.

I fail to see why a processor would need all this credit if he was not paying some of it out to the producer.

Mr. MUSGRAVE: I do not know whether I am supposed to answer that, sir.

The CHAIRMAN: If you would care to make a comment, please do.

Mr. MUSGRAVE: The fruit and vegetable processor operates usually for a short period, not for a full year. He has perhaps six months to operate, not more; and he does have a heavy expense at that time. It is in the interest of the producer that the processor should operate quickly. The consumer does not appreciate a product that is allowed to deteriorate between the time of gathering and the time of processing. It must be done quickly in order to capture and retain flavour and palatability. To do that the processor has to pay out a certain amount of money, he has to get his machinery in operation and pay for quite a lot of help. So the producer is willing to allow a certain time lag to assist the processor, provided that his credit is not further compromised. That is, he is giving the processor one kind of credit—a time credit.

The CHAIRMAN: Mr. Whelan, before you address a question may I welcome you to the committee. I am sure we can say it is now a more colourful committee than it was before our recess. Actually, the colour of the committee has been further increased by the presence of Mr. Kelly today.

Mr. WHELAN: I would say, Mr. Chairman, that Mr. Kelly is here as a farmer today, having an interest in an area where processed crops are sold

to the type of processor to be talked about today. I think this committee—and I would apologize to these gentlemen who are presenting this brief here for keeping them waiting—points up the interest that is being taken in this bankruptcy bill because, of the many meetings I have attended, this is one of the best and one of the earliest, having had a quorum approximately fifteen minutes after the time we were supposed to commence, and had they known that three people of the calibre of these three were to be here today they probably would have been here at 9 o'clock, but unfortunately I did not notify them soon enough.

Have you studied any other countries, say the United States, that have similar ways of marketing? Do their banks have this ridiculous protection which is afforded to our banks here? Do you know if they do?

Mr. MUSGRAVE: I cannot answer that.

Mr. SOREL: I do not know.

Mr. WHELAN: I understand they do not.

In Ontario there are certain rules of marketing for Ontario producers that producers in other sections of Canada do not have with regard to payment for produce. Is it not correct that under the Ontario marketing legislation some marketing groups have to pay within so many days?

Mr. MUSGRAVE: I think that is true.

Mr. WHELAN: I think this is true, and what I am trying to ask is whether you are aware that some of the smaller processors, some of those who do not have as big finances available as the big giant processors, do not follow these rules? Are you aware of this?

Mr. MUSGRAVE: I am conferring with one of my colleagues on this.

Mr. WHELAN: This is what happens. Farmers sign these contracts with small processors and maybe they will wait a year for payment, hoping the processor is lucky enough to sell the produce and that if there is any money left after he pays his bank, the farmer will get his money. Has there been any evidence presented to the farm organizations along this line?

Mr. MUSGRAVE: I think in Quebec. Mr. Sorel can answer that.

Mr. SOREL (*interpretation*): No sales are ever made on conditions similar to that. It does happen that a producer will have to resort to that and settle on that basis, but that is only when the processor is unable or unwilling to pay. No sales are ever made on those conditions.

The CHAIRMAN: I think what the witness said, if you will permit me, was that the conditions that you have just stated are not contained in the contract, but in fact what occurs is that the producer will make any kind of arrangement possible, and not in accordance with the terms of the contract, to get some kind of payment. The type of conditions you mentioned do not occur in a contract.

Mr. WHELAN: Mr. Sorel, then what you are saying is that many processors are not abiding by the agreements they make with the farmers?

Mr. SOREL (*interpretation*): No, most of them abide by the contract. It happens when the farmer sees that he is in a bad fix—and only when he finds he has no chance of being paid otherwise.

Mr. WHELAN: Is it the opinion of farm organizations that small processors should be helped and looked after for the good of agriculture?

Mr. SOREL (*interpretation*): Inasmuch as the processor is not called upon to pay the shot continuously.

Mr. MUSGRAVE: Up to a point we believe he should be.

Mr. WHELAN: Mr. Muir spoke in respect of the bonding of processors. I might say at this time that some of the small processors in my area have had a

meeting to discuss this bonding matter. The suggestion made was similar to the case of bonded warehouses for liquor, where this processed product would be placed in a bonded warehouse, as a result of which the banks would know exactly how much produce the processor had and the farmer as well would know how much produce the processor had. I wonder whether you gentlemen have found out that not the proper information in all cases has been given to the banks and that in a good number of cases banks seem to be a little lax in checking to make sure that this kind of produce is in the warehouse.

Mr. SOREL: We do not know. At least, I myself do not know.

Mr. WHELAN: Have you made any study of the fact that these small processors should be insured by the government, if necessary? I believe one of the other members brought this up a short time ago. This would apply in the same way as export credit, if you understand how that works. A good many of our manufacturers are protected under this type of insurance. Would either of you two gentlemen care to make a comment on this and to say whether or not you think this would be feasible. I think you are aware more than probably many of us are that the agriculture producer in Canada is one of the most efficient there is, and one of the things we are very much concerned about is protecting the small processor, along with protecting the farmer from vertical integration by the large processors—that is, coming in and completely taking over the total operation from the farmer.

Mr. MUSGRAVE: We would say that might be of assistance but we have not considered that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In the appendices attached to your brief there are certain suggestions that on occasions producers not only have not been informed of the bankruptcy or an impending bankruptcy but that the processor or the bank, or the two of them together, have actually encouraged the delivery of more produce after bankruptcy proceedings were begun—or, at least, after the preliminary steps had been taken towards it. Do you know of any instances where either the processor or the bank has notified the producer of the situation?

Mr. MUSGRAVE: I was told of one case where the processor stopped taking delivery on, I think, a Friday but recommenced on Monday, and they took in all they could for three days, and then on the Wednesday or Thursday bankruptcy was announced.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not know whether or not you were here about ten years ago, but at that time your organization appeared before the banking and commerce committee to try and achieve that same end. At that time it was to make an amendment to section 88 of the Bank Act itself. I suggested at that time to the representatives of your organization that it seemed as though, according to their testimony, the banks were somewhat lax in their credit operations and that obviously they did not make too careful an inquiry about the position of those to whom they were making credit. I asked at that time if your membership had ever considered the possibility of taking advantage of this generosity on the part of banks in order to set up your own processing operations. In the intervening ten years could you advise if any steps have been taken in that direction? I have in mind Mr. Whelan's comment, that one of the purposes of the producers and others who are requesting this legislation is to prevent this vertical integration. That would appear to me to be one of the ways in which both purposes could be achieved. Can you advise me as to whether or not any advances have been made toward that end, or if any attempts have been made to form such an organization.

Mr. MUSGRAVE: I would say although there have been meetings held and there has been some investigation, we have to say that the business of farming,

becoming increasingly complex as it is, farmers have felt perhaps they should stick to their own job. There have been occasionally some steps toward processing but these have not been very large or significant. We have one in Barrie, Ontario, the first Cooperative Meat Packers, which is operating to satisfaction. However, I cannot say there has been any move in that general direction.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Has there been any investigation of the situation in the British Columbia fruit industry, which is perhaps the most prosperous part of our province's agricultural industry, where this type of development has taken place to a very great extent; in fact, much of their prosperity has been based on cooperative packing houses.

Mr. McLEAN (*Charlotte*): Mr. Chairman, at this time I would like to comment generally because I have been on both ends, namely the banking and packing end. I think that banks have had some of their worst experiences under section 88. It would seem to me that the bank manager gets a little careless under section 88.

In the early days we borrowed under section 88 and, as we had a general business all over the world, we borrowed in New York. When I was down there I spoke with a banker in New York; he asked me how we borrowed in Canada and I said under section 88. He said what would you call it, and I said I would call it a banker's headache. I went on to explain it to him and he said: Oh well, I do not think we would be bothered with anything like that; we borrow on a plain note in New York. I came back and advised the bankers here that I could borrow in New York on a straight note and asked: how about you? The answer I was given was that they could do anything New York could do, and we never had anything more to do with section 88.

I think the processors should be protected and I do not think it would hurt the banks at all. I know they have this 30 day period in Quebec as I lost a carload of goods under that. The bank manager wrote me a letter, saying that everything was fine and I shipped the carload on 30 days credit, and lost the whole thing. I could not do anything about it. I do not think the head office is to blame; I do not think in this particular case they were responsible. I think in many cases it is the manager who is endeavouring to protect himself. As I say, I think in a great many instances under section 88 it is the individual banker of the branch who tries to protect himself and it is not bankers generally who do such things. In my particular case I do not think the officials at head office knew exactly what was going on because, if they did, I do not think they would like it. I think it is the individual manager who is responsible in this particular case. But, as I have said before, in my experience I think the processor should be protected.

In connection with the fishing business there would be, I suppose, \$60,000 or \$70,000 a week paid out for fish. The fisherman comes in every week and gets his money, and he does not have to extend credit. The processor is getting the credit from the bank and they pass it on to the fishermen. I think the processor should get his money from the bank and pass it on to the farmer.

Mr. SCOTT: Your evidence has impressed me of the need for some assistance to the suppliers. Is there a large number of small processing plants engaged in this sort of operation?

Mr. MUSGRAVE: You ask if there is a large number?

Mr. SCOTT: What is the make-up of the processing industry? Is it confined to large companies, or are there small processing plants which do this work?

Mr. MUSGRAVE: As far as my information goes—and I cannot pretend to be an oracle on this—there is a number, and a reasonable number of large dominant plants; then there are a few smaller ones. There could be more than I

know about; I do not know how many there are, but I believe there is a number of small plants, some of them quite efficient.

Mr. SCOTT: I wonder if you could get us some information about that. The argument used against you by the bankers is that because of this protection, they are able to keep a lot of processing plants in business, and because of this there is competition among them, so that you get the benefit of that competition. They argue that if you should remove this protection, the tendency would be for large processing plants to come into operation, and that this would eventually depress the prices which you get, because there would be less competition among them. Can you get us some information which would help us in this field?

Mr. MUSGRAVE: You means as to the number of large and small plants?

Mr. SCOTT: Yes. And if your argument is true, you might be defeating your own purpose in the long run, because by removing this protection we would be helping to create giant processing plants which would eventually dominate the suppliers. Perhaps there might be some other solution to your problem than this.

Mr. MUSGRAVE: I must reject your argument right now, subject, of course, to further investigation. The large dominant plants already have a terrific voice in setting prices; and the small plants will have some effect as competitive organizations if only with respect to location and to distance. For example, a producer may have an option to deliver to a large plant at a longer distance and to a smaller plant which is closer by. If he has reasonable security for his product, he will choose to travel the shorter distance. This has a number of other aspects. For example, the roads of Essex and Kent in the fall season are pretty busy, when there is a lot of traffic caused by farmers delivering goods to plants. The further they have to go the more will be the traffic hazard. That is one reason we would like to see the small plant maintained, but not at our own cost.

Mr. SCOTT: Mr. Whelan suggested it would be very helpful if you could supply us with information on how this type of problem is attacked in other countries or areas, because it might assist us in dealing with the general problem. So if you could let us know what solutions have been tried, and their effectiveness in other jurisdictions, it would help a lot and be of great assistance to us.

Mr. GRAY: I second the idea that we be supplied with further information in this regard.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I have a supplementary question. Do the producers actually have an opportunity to benefit from the competition between rival processors? Is there likely to be more than one processor within economic distance?

Mr. MUSGRAVE: In some cases, yes; but in other cases, no, there would not be; and quite often negotiating boards—that is, commodity groups which have negotiating boards, negotiate with processors, and that is how the price is arrived at. The large processor has a pretty big voice now in negotiating, and in setting terms and prices.

Mr. RYAN: I have been listening and trying to find a solution. I am convinced that there is real merit in the idea of Mr. Whelan's bill, but I am not so sure that it is the right answer. To my mind there is possible room for consideration by both Mr. Whelan and this committee of the idea of an amendment to section 88 of the Bank Act to the effect that before the bank makes a loan to a primary producer, it must be an insured loan. In this way you get around any argument about provincial versus federal jurisdiction, and you simply put an amendment in the Bank Act itself on when a loan

can be made. This would have the indirect effect that Mr. McLean would like to see, of making sure that the bank and the insurers of the loan would make a pretty thorough and careful investigation before the insurance was granted. It would mean that in the event of a bankruptcy the loan would be free for any insurance company to use, and the money would be there available, so that it would not be necessary to touch the Bankruptcy Act at all in this respect. I think that this might be the answer in other respects as well. This is just an idea that has been running through my mind as I listened today, and I thought the committee might like to consider it.

The CHAIRMAN: Thank you. Now Mr. Pascoe.

Mr. PASCOE: I was going to ask a question concerning the number and size of the processing plants, but I think it has been pretty well answered already. But I would follow that question with one in regard to the contracts for the growing and delivery of products. On page 5 of your brief you say:

There will be farmers who for particular reasons are not especially vulnerable compared to other creditors.

Are there special arrangements made for some farmers which others do not get?

Mr. MUSGRAVE: No, I am thinking of the occasional farmer who operates in several different lines, one who is not a specialist; he is not growing soybeans alone, or peaches alone; he has a number of outlets, so that bankruptcy in one particular line—for example, if he lost his tomatoes, he has still got his peaches, his soybeans and perhaps dairy cattle—so it is not so serious a matter for him.

But in the case of a man who has only his 25 acres of tomatoes, and that is pretty well his sole business, if anything goes wrong with his market, he is really taking a terrific beating.

Mr. AIKEN: Mr. Chairman, I want to follow up Mr. Muir's original idea. I think basically in dealing with processors we are dealing with the people who are handling other people's goods. The main target today, and previously, seems to have been the banks. But it seems to me, coming to Mr. Ryan's idea, that really we should be dealing directly with the processors who are holding other people's goods in trust. There are only two ways to protect those goods; the first is the type of legislation now proposed; the second is bonding of some nature so that the farmer-producer will have protection.

I would like to ask if any of the witnesses can tell us whether bonding is practical for small processors. Can they go to a liability company or bonding company and get a bond to protect the goods of other people that they are holding?

Mr. LEDOUX (*interpretation*): Last year, or indeed over the last two years the tomato producers in Quebec have been negotiating an arrangement with the processors' association with respect to the depositing of a bond with the government body which controls markets in the province of Quebec, a bond which could be equal to 40 per cent of the value of the produce. This is in effect.

I must add, however, that my counsel has advised me that because of the present provisions of the Bankruptcy Act if he were a trustee he would probably pick up the bond himself.

Mr. AIKEN: I recognize, Mr. Chairman, that bonding would probably be a provincial matter to be enforced by the province. I feel that we ought to try to come to some solution whereby bonding is a requirement either under the Bank Act or by tacking it on to this legislation. It is a difficult constitutional problem but I think that is the answer, because we are trying to deal with a problem that does not arise too often by making a massive change in the bankruptcy procedure. As far as the present brief is concerned, it would possibly be advisable, but the bill itself is much beyond this.

Mr. MUIR (*Lisgar*): Mr. McLean suggested that he could not see why, if a processor went to the bank for a loan, some of it should not at least be used as initial payment on the produce that he is processing. This I heartily agree with. I think that under the situation that has been presented to us today, where the producer is practically financing the processor in any case, the answer to their problem is to form a co-operative and to do it on their own, because they are financing them from start to finish. It would seem to me that this would be a very untenable position.

Mr. WHELAN: Mr. Chairman, I would like to make a comment on bonding.

The CHAIRMAN: I am sorry, Mr. Musgrave, do you wish to comment on Mr. Muir's statement?

Mr. MUSGRAVE: The logical conclusion would be for labour unions to form a co-operative and collect.

Mr. MUIR (*Lisgar*): They do. I would say labour as a union is a co-operative.

Mr. MUSGRAVE: They have protection and we would like the same thing. There is abuse here. We want that abuse corrected. We do not want our primary producers in jeopardy of losing a year's work, a year's business and products. This, at present, seems to be the best solution. There have been cases where bonding has been in effect and the losses have exceeded the amount of the bond. We do not think that that is good enough.

Mr. WHELAN: I would suggest, Mr. Chairman, that we ask the small processors, and maybe even the large processors, to appear before this committee so that we can get the other side from them. It is easy to get the list of the small processors because they are licensed to operate in most of the provinces.

There was one thing that annoyed me and I wonder if this has been brought to your attention. In your brief you mention that to a certain extent banks do not give the proper information to the marketing boards who have the right to ask the provincial government to refuse a licence to the processors. Do you feel you give accurate information?

Mr. GRAY: I think the reporter should note that Mr. Whelan said this with a broad smile on his face.

Mr. MUSGRAVE: May we say, Mr. Chairman, that perhaps we do not always give complete information.

The CHAIRMAN: Is that all, gentlemen?

Mr. SCOTT: I have one small question. From what you said earlier, I understood that the processing field is dominated by the large processors. Is that correct?

Mr. MUSGRAVE: I think that is pretty nearly correct as far as Ontario is concerned.

Mr. SCOTT: So that the argument that the bank is using against you is false in that the situation already exists?

Mr. MUSGRAVE: To a large extent we have had to agree with that.

Mr. WHELAN: Has any evidence been presented to the farm organizations, as far as you are aware, that since this bill has been brought before the committee here the bankers are telling the small processors to inform the growers that Whelan is trying to put them out of business? This has been brought to my attention and that is why I want the small processors to be actually brought before this committee.

The CHAIRMAN: I made a note of your suggestion and the secretary will draw it to the attention of the steering committee.

Mr. GRAY: If there is any truth to that suggestion, I would like to say it is most improper.

Mr. SCOTT: It is a form of coercion.

Mr. WHELAN: We must realize that a contract with a processing company in an area where these vegetable and processor crops are produced is a prize possession, and many mild forms of intimidation are used against these people because of the good job that it offers as far as a stable price that the marketing board has been able to get for the producers is concerned. These contracts are not that available for anyone who would like to produce this product because we are importing a great many of these products that could be produced in Canada. This is one of the reasons why we must protect the small producers.

Mr. MUSGRAVE: We agree with that.

The CHAIRMAN: In relation to the point of privilege Mr. Gray mentioned, I would think possibly that if Mr. Whelan feels he has a point of privilege it should be brought up somewhere else besides this committee, if he feels that.

Mr. WHELAN: What do you think of having the small processors brought here and asking them?

The CHAIRMAN: I have taken note of your suggestion that processors be called, and I will speak to the steering committee about it. I would think it would be a useful suggestion for the committee to examine all interested parties, processors as well, because certainly we are discussing them almost to the same extent that we are the other two parties.

Mr. MUSGRAVE: May I say one more word? As far as the Canadian Federation of Agriculture is concerned, I think I can speak for these gentlemen here, we are not angry at anyone. We do not feel ill will or malice against banks or processors at all. If we were in the position they are in, we might do worse than they are doing. We are suggesting that there is a condition which permits the producer to be victimized, and we would like it redressed.

Mr. RYAN: Mr. Chairman, one final comment.

The CHAIRMAN: I might point out it is five minutes to eleven.

Mr. RYAN: Further, along the line of thought of Mr. Aiken and myself, I would like the committee to consider during the adjournment the idea of the federal government setting up an insurance board or crown corporation, if you wish, which would insure these bank rules under section 88, and would supervise them, thus giving the primary producer a great deal of the protection he seeks in this field.

The CHAIRMAN: Thank you, Mr. Ryan.

Mr. WHELAN: Mr. Chairman, you mentioned that it is nearly 11 o'clock. I would like to point out to the three members from the federation of agriculture that if they have time they might come over with us and watch a most glorious waste of time in the House of Commons.

The CHAIRMAN: Mr. Sorel, Mr. Musgrave and Mr. Ledoux, do you have anything you wish to communicate to the committee?

Mr. SOREL (*Interpretation*): I would like to thank you for the opportunity you have given us of putting forward our views before the committee. We would like to thank you for your courtesy and understanding. I would also like to thank you Mr. Chairman, for your courtesy.

The CHAIRMAN: May I thank you, gentlemen, for appearing before us and giving us your views in such a clear and concise fashion. You may be sure that your views will be given every consideration by the members of the committee.

In view of the fact that it might be of assistance to you to know in advance, next week we will study the Allstate Life Insurance Company of Canada bill, Bill S-28. Apparently the sponsors and the witnesses are ready. The witnesses, in respect of Bill C-5, which we have been studying this morning, are not able to appear during that week, but will appear the following week.

There being no further business the committee stands adjourned.

APPENDIX A

ONTARIO TENDER FRUIT GROWERS' MARKETING BOARD
(Letterhead)NOTES ON THE BANKRUPTCY OF GRAHAM FOOD PRODUCTS LTD.
IN NOVEMBER, 1962

On November 27th, 1962, the Bank of Montreal appointed the Clarkson Company Limited as Receiver and Manager of Graham Food Products Limited. This action came as a result of the financial position of the processing company and the security held by the Bank for the money loaned to Graham's. Although the Bank's position is regarded as legally sound, its action has deprived growers and other creditors of any hope of recovering any part of their accounts owing to them.

The events prior to the action taken on November 27th appear to be normal but are set forth as follows for the record:

Payments for asparagus purchased from the Ontario Asparagus Growers' Marketing Board were made according to the "Agreement for Marketing the 1962 Crop of Asparagus for Processing" during June and July, 1962. Similarly, payments for sweet and sour cherries purchased from growers and dealers were made on September 15th, 1962 in the normal manner. However, a dealer in fruits and vegetables located in the Niagara Peninsula had heard rumours about the financial situation of Graham's in late August and after enquiring through its local bank, received the following report dated August 28th from the Bank of Montreal, Trenton, Ontario.

The above name (Graham Food Products Ltd.) have carried a satisfactory account at this Branch for the past three years. While they are carrying a fairly heavy inventory which to some extent cramps their working capital position, we consider them a reasonable risk for their normal business requirements.

On this knowledge, this Company continued to sell Graham's produce. Other Companies in the district as well as many growers in Niagara and the Essex area also freely sold fruit and vegetables as in past years. When the established time of November 15th came to make payment for peaches and Bartlett pears to the Ontario Tender Fruit Growers' Marketing Board and no payment was made, enquiries at the office of Graham's revealed the owner was arranging for payment through the Bank and was in Toronto making the necessary arrangements. Repeated telephone calls to the owner were unsuccessful in reaching him until November 27th when the Board was informed by the owner that he was in the hands of the Receiver. While this was taking place payments to tomato growers had been made and with the exception of a few uncashed cheques, most tomato growers received their money.

Purchases by Graham's in 1960 and 1961 of tender fruit were considerably less than the amount taken in 1962 when deliveries were up 78% over the 1960-61 average. At the same time, sweet cherries and Bartlett pears were purchased in 1962 for the first time. It is estimated that dealers and growers of tender fruit delivered over \$100,000 worth of peaches, Bartlett and Kieffer pears for which they have not been paid. In all, thirty-four growers and seven fruit dealers are creditors officially but many more growers are involved because they sold their fruit to one of the dealers who did not make a full payment to his growers.

The last delivery of fruit for which records are available was made on November 5th, consisting of Kieffer pears. Since the pears at this time of year require ripening it is ironical to note that these pears were being processed after November 27th when Graham's was in receivership which could only benefit the Bank at this point.

Since November 27th, the Receiver has been liquidating stock at a normal rate at market prices and it would appear that had purchases of fruit and vegetables been kept to a normal amount and the Bank had not stepped in, that the Company could have still been operating. At the time of placement in receivership there was a book deficit on the Company's financial statement of \$122,074 over total assets of \$1,676,030. The Bank loan was \$1,376,514 on an inventory of \$1,340,657 so that it seems that the Bank had made a serious error in making such a large loan to the Company even if it did have good security. However, it appears the Bank may lose several hundred thousand dollars even with the security they had by taking this action.

The reasons for failure appear to be over-expansion of purchases by Graham Foods beyond reasonable hope of profitable sales and over-extension of credit by the Bank to allow this situation up until the time for payments to growers in November of 1962. In a letter dated January 2, 1963, creditors of Graham's were informed as follows:

"Severe operating losses in 1961 and 1962, which amounted to nearly \$200,000 in each year placed the Company in a precarious financial position. The Company was unable to pay its accounts and could not finance the completion of the canning of the 1962 produce to which it was committed. Accordingly, on November 27th, 1962 The Clarkson Company Limited was appointed Receiver and Manager under a Debenture held for the Bank of Montreal".

At time of writing, the affairs of the Company are still being managed by the Receiver and growers can only watch the use of their fruit and vegetables to partially satisfy the claims of other creditors who by law are in a preferred position.

ONTARIO TENDER FRUIT GROWERS' MARKETING BOARD

July 22, 1963.

APPENDIX B

BRITISH COLUMBIA FEDERATION OF AGRICULTURE
(Letterhead)

June 27, 1963.

Mr. E. F. Whelan, M.P.,
House of Commons,
Ottawa, Ontario
Dear Mr. Whelan:

My Board wish to add their support to your efforts through Bill C-5 to correct the iniquitous position that farmer suppliers usually find themselves in when the processor they are dealing with goes into bankruptcy.

In this province, on April 28, 1961, Visco Poultry Packing (1957) Ltd. ceased operations following being declared bankrupt. All assets were immediately seized by Imperial Bank of Canada under Section 88 of the Bank Act. This resulted in 19 poultry farmers being unpaid for the birds they had delivered to the tune of \$76,582.52. One large producer lost \$14,390.70. The prospects of any recovery are nil.

In this case it seemed more than just coincidence that there should have been an especially heavy kill laid on in advance, just prior to the plant being closed, particularly in view of the fact that the President of the company was also the personal guarantor of the bank loan of some \$150,000. The bank, of course, seized everything including the freshly killed poultry, so did not need to claim on the guarantor.

It is our hope to forward you the particulars on two other like cases so that you can use them along with the above when your Bill is before the Banking and Commerce Committee.

Yours sincerely,

Chas. E. S. Walls,
Manager

APPENDIX C

March 20, 1962.

TRANSLATION

Tomato Growers Board,
515 Ave. Viger,
Montreal, Que.
Att. Mr. Gilles Ledoux

RE: Yourself and J. J. Joubert & Fils, Ltée.
(bankrupt)

Dear Sir:

On March 16, I attended a meeting of creditors called by the Trusteeship in the bankruptcy of J. J. Joubert & Fils, Ltée. at Le Palais de Justice (Court House) in Montreal and, as foreseen, I have been named "inspector" (legal advisor). Immediately afterwards, I attended the first meeting of the "inspectors" at the office of The Trusteeship.

At their meeting, the creditors were told:

(a) that the Trusteeship was forced by legal procedures to give to preferred and secured creditors all the personal property of J. J. Joubert & Fils, Ltée.;

(b) that the secured claim of the General Trust of Canada could not be contested;

(c) that, on the other hand, it could probably be advantageous to contest the second secured claim which, if annulled, would allow some recovery, by changing the status of the preferred claim held by the Canadian National Bank into an ordinary claim;

(d) that the Trusteeship does not have any money on hand to contest this second secured claim;

(e) that, if the creditors would forfeit to the Trusteeship a sum equivalent to 3% of their claims, the proceeds thus obtained would be used for that work.

I then explained to the producers present, about 20 of them, that I was representing the Board and informed them that the Board had already committed itself, in the name of all and each one of them, to meet the necessary costs if the above proposal was accepted. I had beforehand been informed that the costs which producers would probably be asked to pay would not exceed \$500.

Since the Trusteeship had asked the creditors to let their decision be known as soon as possible, all the producers left the decision to me, which I postponed until the meeting of the "inspectors".

At the meeting of the "inspectors" the following points were clarified:

- (a) the steps or procedure to be followed;
- (b) the costs involved;
- (c) the legal basis of the proposed procedure;
- (d) the chances of success.

In order to prepare their recommendation, the Trusteeship and its attorney, Mr. McAllister, should first of all proceed to look at the accounting books of J. J. Joubert & Fils, Ltée, its book of minutes, any document pertaining to its dealings with the Canadian National Bank, and finally, interview the directors of the bankrupt company and officials of the Canadian National Bank.

The estimated cost of these first steps would amount to about \$4,000.00. This excludes any other expenses connected with the renewal of the Trusteeship's bond, the adequate insurance coverage of the personal property on hand, and a number of other necessary measures.

Research should first try to establish the amount of credit allowed to the company by the Canadian National Bank against certain securities offered personally by the directors. Then should be established the total margin of credit allowed on the basis of personal securities and general mortgage as well.

The attorney of the Trusteeship claims that if the margin of credit remained unchanged whatever the kind of and the amount of securities held by the Bank, the secured claim which followed the giving of personal securities was agreed to without any consideration. (?)

This line of thinking could lead to a long legal fight, even to the Supreme Court.

The Trusteeship and its attorney did not seem to agree on the chances of success of such a proposal. The Trusteeship implied that, to his best knowledge, the margin of credit had been affected, i.e. increased, by the claim accepted by the bankrupt company. The attorney of the Trusteeship on the other hand, although more optimistic, did not support by worthwhile legal arguments his opinion that the secured claim based on apparently sufficient personal securities was void.

To further the hypothesis of the attorney of the Trusteeship, it would equally be necessary to look at the time element of such a procedure. It seems certain that a final decision from the highest tribunal of the country could not be foreseen before two years.

Should the outcome be successful, the Trusteeship should then try to buy out the claim of the General Trust of Canada and attempt to sell the building at the best price possible. If the real estate market has not improved by then, the creditors should not expect to recuperate much more than 25% of their claims.

Such a risky outcome as well as the costs involved led me to inform the "inspectors" that the producers were rejecting the proposal of the Trusteeship. I must add also that the Trusteeship obtained approval from a number of creditors whose claims total \$10,000. and that the attorney of the Continental Can Co., claiming (), postponed his decision until March 19, 1962.

In view of these facts, the producers should forfeit their claim against the Company. It is most probable that the Continental Can Co. and the other creditors as well will take a decision not too different from the one I have taken myself.

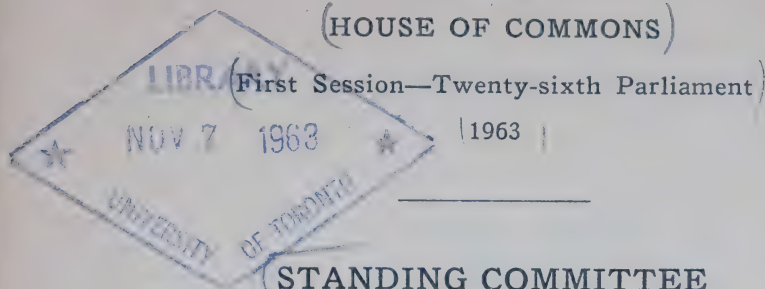
Yours truly,

VERSCHELDEN, BOURRET &
LAMONTAGNE

per: Louis Lamontagne



(HOUSE OF COMMONS)



| 1963 |

STANDING COMMITTEE

ON

ANADA. **BANKING AND COMMERCE**

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

(No. 3)

(FRIDAY, OCTOBER 25, 1963)

(Respecting

Bill S-28, An Act to incorporate Allstate Life Insurance
Company of Canada.)

WITNESSES:

(Mr. James M. Tory, Parliamentary Agent; Mr. J. R. O'Kell, Secretary,
Simpsons-Sears Ltd., Mr. John Atkinson, President, Allstate Insurance
Company of Canada and Canadian Manager, Allstate Insurance
Company; Mr. David Miller, Counsel, Allstate Insurance Company;
Mr. K. R. MacGregor, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY

OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Jewett (<i>Miss</i>),	Pilon,
Boulanger,	Kelly,	Ryan,
Cameron (<i>Nanaimo-</i>	Kindt,	Rynard,
<i>Cowichan-The Islands</i>)	Klein,	Sauvé,
Chaplin,	Lloyd,	Scott,
Chrétien,	Macaluso,	Skoreyko,
Côté (<i>Chicoutimi</i>),	McLean (<i>Charlotte</i>),	Tardif,
Douglas,	Monteith,	Thomas,
Flemming (<i>Victoria-</i>	More,	Thompson,
<i>Carleton</i>),	Morison,	Vincent,
Gelber,	Muir (<i>Lisgar</i>),	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, October 3, 1963.

Ordered,—That Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada, be referred to the Standing Committee on Banking and Commerce.

MONDAY, October 21, 1963.

Ordered,—That the quorum of the Standing Committee on Banking and Commerce be reduced from 12 to 10 Members and that Standing Order 65(1)(d) be suspended in relation thereto.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

REPORTS TO THE HOUSE

October 21, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

NINTH REPORT

Your Committee recommends that its quorum be reduced from 12 to 10 members and that Standing Order 65(1)(d) be suspended in relation thereto.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

October 25, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

TENTH REPORT

Your Committee has considered Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada and has agreed to report it without amendment. A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 3) is appended.

Respectfully submitted,

EDMUND ASSELIN,
Chairman,

(NOTE: The Fourth to Eighth Reports inclusive deal with Private Bills in respect of which no Proceedings were published.)

MINUTES OF PROCEEDINGS

FRIDAY, October 25, 1963.

(11)

The Standing Committee on Banking and Commerce met at 9:10 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Addison, Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Basford Bell, Boulanger, Cameron, (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Douglas, Gelber, Habel, Kelly, Macaluso, McLean (*Charlotte*), Moreau, More, Nugent, Olson, Pascoe, Pilon, Ryan, Thomas, Vincent and Whelan,—(27).

In attendance: Mr. James M. Tory, Parliamentary Agent; Mr. J. R. O'Kell, Secretary, Simpson-Sears Limited; Mr. John Atkinson, President, Allstate Insurance Company of Canada and Canadian Manager, Allstate Insurance Company; Mr. David Miller, Counsel; Mr. Charles Holman, Canadian Public Affairs Manager, and Mr. Roland Brousseau, Quebec Sales Manager, all of Allstate Insurance Company; and Mr. K. R. MacGregor, Superintendent of Insurance.

The members proceeded to consideration of Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada.

In reply to a suggestion by the Sponsor of the Bill, Mr. Ryan, that Minutes of Proceedings and Evidence relating to Bill S-28 be published, the Chairman stated that it was not the practice of Committees to print on Private Bills.

After discussion Mr. Boulanger moved, seconded by Mr. Pilon, that an official stenographic report of the Committee's Proceedings and Evidence on Bill S-28 be taken and transcribed and that six copies be made available for the use of the Committee.

Mr. Olson, seconded by Mr. Whelan, moved that the motion be amended to read as follows:

"That an official stenographic report of the Committee's Proceedings and Evidence on Bill S-28 be taken and transcribed and that 500 copies be printed in English and 350 in French, the cost of printing to be charged to the usual source".

The motion as amended was carried unanimously.

The Members agreed that the English interpretation of questions and answers in French be regarded as part of the official record.

Shorthand reporters were then called in to record the proceedings.

On the Preamble:

The Chairman called the Preamble and invited the Sponsor to introduce the Parliamentary Agent and the witnesses.

Mr. O'Kell and Mr. Atkinson made brief statements on the purpose of the Bill.

Mr. Tory was questioned, assisted by Messrs. O'Kell, Atkinson, Miller and MacGregor.

The Preamble, Clauses 1 to 8 inclusive, and the Title were severally carried.

The Bill was carried without amendment.

Ordered: That Bill S-28 be reported without amendment.

At 11:00 a.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, October 25, 1963

The CHAIRMAN: Gentlemen, we have a quorum.

At this time I would like to call upon Mr. Ryan. Mr. Ryan, would you reintroduce your witnesses in order that they may be placed on the record.

Mr. RYAN: Mr. Chairman, the parliamentary agent in respect of this bill is Mr. James M. Tory of Toronto, Ontario, who is across the way from me. Allstate representatives are also present, and I would like to introduce at this time our two main witnesses; first of all, Mr. Joseph O'Kell, secretary of Simpsons-Sears Limited, who is sitting immediately to your right, and to his right Mr. John Atkinson, president of Allstate insurance company of Canada.

Others present, who will answer any special questions referred to them are Mr. Roland Brousseau, Quebec sales manager for Allstate, and Mr. David Miller, counsel for Allstate Insurance Company. On his left is Mr. Charles C. Holmon, public affairs manager for Allstate Insurance Companies.

The CHAIRMAN: Gentlemen, shall the preamble carry?

Gentlemen, if you wish to address any questions to the witnesses or, possibly to Mr. Tory, you may do so. However, first of all, perhaps Mr. Tory would like to explain the purpose of this bill.

Mr. James M. TORY (*Parliamentary Agent*): Thank you, Mr. Chairman.

It is proposed, Mr. Chairman, that Mr. O'Kell, speaking on behalf of Simpsons-Sears Limited, would first make a statement to the committee as to the interest of Simpsons-Sears in this bill, and then Mr. Atkinson can explain to the committee some basic facts as to the operations of Allstate in Canada, particularly how the incorporation of this bill will fit in the long term plan in this country.

The CHAIRMAN: Then Mr. O'Kell will make a statement, followed by Mr. Atkinson, after which the members of this committee may direct questions. Also, I would like to say that if there are any questions with regard to the examination which the administration has made of this bill Mr. MacGregor, the superintendent of insurance, is with us this morning.

Would you now proceed, Mr. O'Kell.

Mr. Joseph O'KELL (*Secretary of Simpsons-Sears Limited*): Thank you, Mr. Chairman.

The CHAIRMAN: With your permission, I would suggest that we permit the witnesses to remain seated, if they so wish.

Mr. O'KELL: Mr. Chairman, I am the secretary of Simpsons-Sears Limited and I am appearing before this committee on behalf of that company to support the application for a private bill to incorporate the Allstate Life Insurance Company of Canada.

As has been stated on several occasions, the reason for the incorporation of this company and for the incorporation in 1960 of Allstate Insurance Company of Canada is to enable Simpsons-Sears Limited to acquire a 25 per cent interest in the Canadian business of Allstate Insurance Company, an Illinois corporation presently carrying on business in Canada under the authority of a licence issued under the Foreign Insurance Companies Act.

Allstate Insurance Company is wholly owned by Sears, Roebuck and Company, a United States company carrying on the retail and mail order

business, and the acquisition of this interest by Simpsons-Sears is in accordance with an undertaking given Simpsons, limited by Sears, Roebuck and company more than 10 years ago.

Simpsons-Sears is a Canadian company incorporated under federal charter on September 17, 1962, and carries on retail, mail order and department store operations throughout Canada.

The equity in our company—that is, in Simpsons-Sears—is represented by three classes of shares: class A shares, class B shares and class C shares. The two million class B shares are all held by Simpsons, Limited, a Canadian company with whose operations no doubt you are familiar. The two million class C shares are all held by Sears, Roebuck and company. There are 490,270 issued class A shares, which are held by present and former employees and by the Simpsons-Sears profit sharing retirement fund. At the present time, 86 per cent of these class A shares are held in Canada by 362 Canadian shareholders, including 166,940 class A shares, or 34 per cent of the class A shares issued are owned by our profit sharing retirement fund in which 9,000 Canadian employee members have an interest.

The issuance of any further class A shares has been confined by the order of the board of directors to employees of Simpsons-Sears, all of whom are presently resident in Canada, and to the Simpsons-Sears profit sharing retirement fund.

I would like to sum up this statement by saying that when the class A shares are taken into account in the capitalization of this company approximately 54 per cent of the equity of Simpsons-Sears will be held in Canada, and when the remainder of those class A shares are issued approximately 55 per cent of the equity will be in the hands of Canadians.

The question has been raised as to why Simpsons-Sears should not acquire greater interest in the Canadian operation of Allstate. I can only say that Simpsons-Sears will invest approximately \$3,375,000 to acquire this 25 per cent interest.

Our directors after careful consideration felt that a retail organization such as Simpsons-Sears in its present state of development would be unwise to invest any greater amount in the insurance business at this time.

We in Simpsons-Sears strongly recommend that your committee approve the incorporation of the Allstate Life Insurance Company so that we may begin as a company immediately to participate in the earnings and operation of the two Canadian Allstate companies. We believe that this will be of benefit to Simpsons Limited and our other Canadian shareholders. In addition it will permit substantial interests in the business held entirely in the United States to be owned in Canada.

I make this recommendation to you on behalf of Simpsons-Sears Limited, a company the majority of whose equity is held by Canadians and which is doing all its business in Canada serving Canadian consumers, and which in every way should be regarded as Canadian. Thank you very much, Mr. Chairman.

The CHAIRMAN: Thank you Mr. O'Kell. Mr. Atkinson, I believe you have something you would like to add to that statement. Gentlemen, Mr. Atkinson, president of the company.

Mr. JOHN ATKINSON (*Manager of Allstate Insurance Company and President of the Allstate Insurance Company of Canada*): Mr. Chairman, and members of the committee, I am John Atkinson the manager of the Allstate Insurance Companies in Canada and I am president of the Allstate Insurance Company of Canada.

The Allstate Life Insurance Company was incorporated as an Illinois company in 1957 and was subsequently licensed to do business throughout the

United States. In 1961 Allstate Life Insurance Company came to Canada and applied to be registered by Mr. MacGregor, our Superintendent of Insurance for Canada. Following registration of the Allstate Life Insurance Company by the Canadian superintendent we then applied to and received from the insurance superintendents of the various provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, licences to carry on the business of life insurance in these provinces.

The life insurance operations of our Allstate Insurance Company are conducted in Canada from two regional offices, Vancouver which supervises the provinces of British Columbia and Alberta, and the Toronto regional office which conducts the insurance operations for the remainder of the country.

These regional offices are staffed to handle all the functional and operational areas of our business, and here I refer to such things as settlements of claims, underwriting the risks, selling of our policies, the maintenance of our personnel and the performing of all other services required by us of our policyholder family.

One of the important developmental philosophies of our parent companies has been to, as completely as possible, decentralize its operation. I can say this philosophy has had a fine strengthening effect on our personnel. Referring specifically to the Canadian operation, it has been of great benefit.

I should like to explain this by just one example. The underwriting of life insurance risks by most companies is generally the function of the head office, but because of our decentralized way of life at Allstate and its necessary delegation of responsibility by degree as it can be assumed by our personnel we are now in a position in our two regional offices, Vancouver and Toronto, where the life underwriting staffs can make by far the greatest number of decisions on the risk and will refer only very rare cases, and these would be such instances where exceptionally large amounts of insurance are involved or special medical cases, to our home office medical staff.

This same development of increasing the knowledge and stature of our employees is taking place in all the other areas of our companies.

I mention this only because I feel it is important to assure you gentlemen of this committee that we have in effect developed and trained people who can take care of the Allstate Life Insurance Company if and when it is incorporated by the government.

I also feel it is important to tell you that we provide this insurance service from approximately 78, I think that was our latest count, locations spread across Canada. Our life insurance sales are handled by 250 agents presently employed. These agents are completely trained at our own insurance school. There are two schools maintained at our two regional offices. We refer to this as formal training. This training is required before we will permit an agent to be licensed or seek a licence in any of the provinces.

The training of our agents after the formal training in the field or on the job training is handled by fully qualified and highly experienced district sales managers. The training is continuous and will continue as long as the need for such training is apparent to us.

I think it is important also to state that agents of our Allstate Life Insurance Company operate, to the best of my knowledge, on exactly the same basis as do agents of any life insurance company in that they are on contract to our company exclusively.

We sell in our company the standard life insurance contracts sold by all insurance companies. Three specific examples are; we sell term insurance which has a high protection feature with no cash value, or no saving value; we sell whole or ordinary life insurance policies where the protection and

savings features are more evenly balanced; and, we sell the endowment form of policy where the savings potential is greater.

It is our intention that if this bill is approved, the life insurance contracts which have been placed in Allstate Life Insurance Company since 1961 will be reinsured in the Allstate Life Insurance Company of Canada.

I can only say with reference to our investment policies that the future investment policy of the Allstate Life Insurance Company of Canada would be well taken care of by required Government Statutes. We have maintained investments in Canada according to those statutes and always exceed the legal requirements.

The formation of the Allstate Life Insurance Company in Canada has advantages as you have heard already pointed out by Mr. O'Kell. To us in Allstate we consider it most important to carry out these promises which were made many many years ago, to provide a share of ownership to Simpsons-Sears in the Allstate insurance business.

The incorporation of the Allstate Life Insurance Company of Canada would complete this promise. I urgently petition you, Mr. Chairman, and members of the committee, to favourably endorse our petition.

The CHAIRMAN: Thank you, Mr. Atkinson.

Gentlemen, are there any questions that you wish to ask?

Mr. GELBER: Can we hear Mr. MacGregor?

The CHAIRMAN: Yes. However it has been previously pointed out that Mr. MacGregor is not the sponsor of these bills and that it may even not be proper for him to appear to be the sponsor. Consequently, if you wish to address questions to Mr. MacGregor, he is available as I announced at the beginning, but if you should want the history of the company, I would think that maybe it would be better if the sponsor should describe it.

Mr. GELBER: He has given us a good deal of help in the past and I thought it might be useful to have it now.

The CHAIRMAN: If the committee would like to hear Mr. MacGregor at this time, or if they have questions to address to Mr. MacGregor, I suggest we proceed with the questioning. However, as far as questions are concerned, I have on my list Mr. Moreau.

Mr. MOREAU: Mr. Chairman, Mr. O'Kell, you went into the history of the share ownership of the company of Simpsons-Sears. I would like to clear up two or three points that were raised. You indicated there were three classes of shares in Simpsons-Sears, A B and C. I wonder if you could tell us which of those classes are voting and which are non-voting, as well as the percentage of Canadian ownership that would be voting.

Mr. O'KELL: Class B and class C shares referred to which are owned respectively by Simpsons Limited and Sears-Roebuck and Company are the voting shares of the company. The class A shares are non-voting preference shares of the company primarily issued to employees, and they become voting shares only in the event of a dividend being declared and not paid.

Mr. THOMAS: I have a point of procedure, Mr. Chairman. I would suggest that we follow the suggestion that has already been made that we have the general statements from the sponsor first, from the company representatives, and also a general statement from Mr. MacGregor, and then that we go on with the questioning afterwards.

The CHAIRMAN: I am prepared to follow any procedure the committee wishes, Mr. Thomas. However, at the beginning of the meeting I thought we agreed that we would hear from the sponsors and the witnesses and that we would then question them. If the committee wishes to hear Mr. MacGregor and

to question him, then we might find ourselves in the position of wanting to question three or four people all at once.

Mr. THOMAS: Will he be available for questioning after we get the general statements?

The CHAIRMAN: Certainly. I will follow any procedure the committee wishes to follow in the matter.

Mr. THOMAS: That would be my wish, that we hear the general statements, as we have, and that we hear a general statement from Mr. MacGregor next.

Mr. OLSON: This seems quite simple to me. If any member of the committee wishes to ask questions of Mr. MacGregor, he could do it.

The CHAIRMAN: I have on my list for questions Mr. Moreau, Mr. Aiken and Mr. Whelan.

Mr. MOREAU: As I understand the capital structure of the company as it has been proposed, it will be 75 per cent owned by Allstate and 25 per cent by Simpsons-Sears. Am I correct?

Mr. O'KELL: Correct.

Mr. MOREAU: Which in effect would mean that at least one part of Simpsons-Sears would own apparently about 12½ per cent, if you break it down in that way.

Mr. O'KELL: Yes.

Mr. MOREAU: I am sure you are aware but I will just put this in the form of a question, of the statement of the Minister of Finance in the budget speech. You apparently are also aware of the wish of the government to have existing corporations become Canadian by definition, and that is by having 25 per cent of their capital stock issued in Canada. You are aware of this statement, are you?

Mr. O'KELL: Correct.

Mr. MOREAU: And of this further definition of a Canadian corporation, that is a corporation resident in Canada where at least 51 per cent of its voting shares are owned by Canadians. You are aware of this part of the definition?

Mr. O'KELL: Yes.

Mr. MOREAU: I shall now go back to the statements made by the sponsor, Mr. Ryan, and to the 1953 agreement by Sears-Roebuck and Simpsons in Canada. As I understand the history, Simpsons-Sears by this agreement were entitled to participate in up to 51 per cent of the insurance business in Canada. Is this correct?

Mr. O'KELL: Let me clear that statement. What you say is true, Mr. Moreau, but when we came to evaluate the investment which Simpsons-Sears was going to have to make to acquire this interest, the directors of the company decided that this amount which I have quoted to you of \$3,375,000, was all that we as a company were prepared to put into the investment, into the insurance business at this particular time. As a matter of fact it was considered that it would be quite a substantial amount and we gave long and considerable consideration before we arrived at the decision that we would even purchase this amount. Had we been able to get it cheaper, perhaps we might have thought better of it, but this was the utmost that the company thought they should invest at this moment in the company in Canada as a retail organization.

Mr. MOREAU: It is not our function to direct the company in its financial position. I would just like to ask, in the incorporation in 1960 of fire and other types of insurance business where the charter was granted, what percentage of ownership existed at that time? Frankly, I did not have time to do the research on this, so could you clear it up for me?

Mr. O'KELL: In my statement here I indicated that Simpsons-Sears Limited, our company, would have 25 per cent interest in each of the companies, the casualty company and the life insurance company.

Mr. MOREAU: Could you tell me what the status was at the time of the incorporation? I was wondering what equity Simpsons-Sears held in 1960?

Mr. O'KELL: The company at that time was not incorporated. It was incorporated in 1960, and I do not believe we have as yet received, nor have we paid for our 25 per cent interest in the casualty company. We are getting this as a package deal in both companies. When the incorporation of this Allstate Life Insurance Company is completed, then there would be a transfer to Simpsons-Sears of the 25 per cent interest in each company. This has not, as I understand, taken place yet, but it will as soon as the Allstate Life Insurance Company is incorporated.

Mr. MOREAU: I have one final question on this. I wonder if the company had considered, in view of the 1953 agreement and the apparent agreement at that time, that that could be a 50-50 deal. I appreciate that the expansion program, at least in the short term, strapped the company to some extent in capital. I wonder if the directors considered offering this stock to other Canadian shareholders?

Mr. O'KELL: We are speaking now of the Allstate Life Insurance Company which is the subject for discussion here. This would be a matter for the Allstate Life Insurance Company directors to determine. As I understand it—and I am really speaking for the president of the Allstate company on my right when I say this—it is my understanding that they are not in a position at the present time to think of offering shares in the Allstate Life Insurance Company to other Canadian shareholders by reason of the fact that the company has just begun to do business in Canada and it is not in a position where it could consider offering shares to the public. The Allstate Life Insurance Company, if I may say so, is not yet in black figures for one thing.

Mr. MOREAU: In developing this point, as I am sure you know we are now considering the budget proposals and the resolutions of the Minister of Finance, would you not think if we as a parliament and as members of parliament—and I am assuming now that these resolutions will be passed—express the wish that existing corporations should become Canadian, by the definition outlined by the minister, it would be rather farcical if we, again as a parliament and as members of parliament, grant new incorporations that do not comply with the express wishes of parliament?

Mr. O'KELL: I can hardly comment on your opinion, Mr. Moreau. I can only say that as far as this company is concerned, we think it should be incorporated in its present form and that it should be left to the directors of the company when it is incorporated to consider the wishes of parliament in future offerings of shares.

Mr. MOREAU: I would just like to clear up at least one point. I have no prejudice regarding foreign capital or Allstate. My difficulty regarding this incorporation lies entirely within the budget resolutions and what parliament is going to decide.

Mr. O'KELL: I have indicated that as far as the equity in the capital of Simpsons-Sears Company is concerned, more than 51 per cent of it is in the hands of Canadian residents and shareholders.

Mr. MOREAU: I appreciate the resolution did say that the corporation is a resident in Canada and with at least 51 per cent of its voting shares owned by Canadians.

Mr. OLSON: May I ask one supplementary question.

The CHAIRMAN: I do not normally approve of supplementary questions as they usually get quite far afield. However, if the committee, particularly Mr. Aiken, does not object I will be glad to allow you to ask such a question.

Mr. AIKEN: My questions relate to other matters.

The CHAIRMAN: If neither Mr. Aiken nor the committee has any objection, I shall be glad to hear you.

Mr. OLSON: I would like to ask if Mr. Atkinson and the directors have considered offering equity to Canadian shareholders.

Mr. ATKINSON: Not at this point, and for the reasons outlined by Mr. O'Kell. We really do not have anything to sell as far as a prospectus is concerned. I think it definitely would come under consideration when the company is operating on a profitable basis.

Mr. AIKEN: Mr. Chairman, I have three questions which relate to the insurance business rather than the financial structure. The first one I would like to ask is one that I think many people have been asking; it is a general question which I will put to Mr. O'Kell.

Why would a merchandising company like Simpsons or Simpsons-Sears want to get into the insurance business?

Mr. O'KELL: Mr. Aiken, may I say that possibly the investment of money in an insurance company such as this is a matter in which our directors must have been guided by the fact that they think this is going to be a successful operation and one in which the shareholders' money is properly invested.

We are not alone in Canada as a retail departmental store investing in the insurance business. We have our leading competitors in Canada who already own their own insurance business, with which I think you are familiar.

Mr. AIKEN: Then this is a financial investment rather than a branch of general merchandise; is that a correct assumption?

Mr. O'KELL: I would say this is a financial investment.

Mr. AIKEN: My second question relates to the agents who are going to be selling life insurance or who are now selling it under the present system. You mentioned there were a number. Do they apply themselves solely to selling life insurance or do they have other duties?

Mr. ATKINSON: Our men are licensed to sell all forms of insurance, casualty, fire and life. These are the same agents who are representing the casualty company.

Mr. AIKEN: These agents will be selling casualty and life?

Mr. ATKINSON: Casualty and life, yes.

Mr. AIKEN: These agents do not do anything else in the merchandising field?

Mr. ATKINSON: Absolutely not.

Mr. AIKEN: Then the third question is this. Can insurance, either life or casualty, be sold by persons who have no special training? I am referring to order office sales people.

Mr. ATKINSON: No, they cannot to the best of my knowledge. Properly licensed individuals devoting their time to insurance are the only people permitted by law to sell insurance. There is a legal requirement.

Mr. O'KELL: May I say that no employees of Simpsons-Sears are going to be employed in the business of selling insurance.

Mr. AIKEN: Then I might ask a direct question. If I went into a Simpsons-Sears order office, could I make an application for life insurance in that office?

Mr. ATKINSON: Not life insurance, no. It is a personal sale. There is no life insurance sale made by mail by the Allstate Insurance Company. If there was

an agent available, Mr. Aiken, in that order office as part of the operation, then you could purchase life insurance through him, but by no other means.

Mr. AIKEN: So if I went into an order office and it was a small office and there was no agent there they would merely refer this matter to the agent and have him call.

Mr. ATKINSON: That is approximately what would happen.

The CHAIRMAN: Mr. Olson has informed me he must leave in a minute or two, and he has some questions to ask, if Mr. Whelan does not mind.

Mr. OLSON: Thank you Mr. Chairman.

Mr. WHELAN: We have been told that at the present time no shares have been offered to Canadians other than those to Simpsons-Sears, because they have nothing to sell. At the same time we have been told that Simpsons-Sears is going to invest over \$3 million. If there is nothing to sell then what is Simpsons-Sears buying?

Mr. O'KELL: Mr. Olson, let me repeat what I said before in my statement. This was an arrangement made at the time of the merger and the creation of Simpsons-Sears by the joint investment of Simpsons Limited and Sears, Roebuck. We, that is Simpsons-Sears, have delayed taking part in investment in the operations of Allstate until such time as we felt that Allstate—speaking now of the casualty company which was incorporated in 1960—has started successfully to do business in Canada. We have delayed investing in the Allstate Life Insurance Company until this point when its investment takes place.

We feel we can invest money in future operations of Allstate Life Insurance Company; whereas I do not think we would advise opening, nor would the shareholders or directors of Allstate Insurance Company care to open, this investment to the public at this particular time.

Mr. OLSON: Then, Mr. Chairman, in the normal course of setting up a new company I think we can agree there is usually a prospective equity; in other words there is some risk involved and usually as the company succeeds the shares go up. Do we take it then that they will only be offered to Canadians after the company has moved from the red into the black, by which time the shares offered to Canadians will be not necessarily inflated but at least of a much higher price than what is issued now.

Mr. O'KELL: I think you do not quite mean that last statement; you mean offered to the public.

Mr. OLSON: Yes, when or if it is offered to the public.

Mr. O'KELL: I can hardly speak for Allstate. I would ask the president to answer your question in that connection.

My own thought as a private citizen is that I would not want to participate at the present time in investment of a company which has just started, whereas I think Simpsons-Sears Limited is in a better position to take a risk in the investment than the citizens of Canada.

Mr. OLSON: Is there not a fundamental point here? Are you suggesting that Canadians are not willing to invest in a company being set-up? You are taking action now to make available only to foreign capital in the initial stages?

Mr. O'KELL: Mr. Olson, I can go back to what I originally suggested to you, and that is that in its present state of development and in preparing a prospectus supposing Allstate was preparing one, it would be a very poor prospectus indeed to offer to Canadian citizens to invest in Allstate Life Insurance Company with the balance sheet it could show for such a prospectus.

I think you yourself would have serious concern about investing either your money or your family's money in a company which is still operating in the red and which has no balance sheet, or really no experience in Canada except for its rather small operations in the last two years. I make this suggestion to you without offering any criticism of your suggestion.

Mr. OLSON: That is all, thank you, Mr. Chairman.

The CHAIRMAN: Now, Mr. Whelan.

Mr. WHELAN: I have three questions. The first one is this: I would like to ask if it is not so that the dominion government passed legislation approximately five years ago to allow life insurance companies in Canada to form mutuals?

Mr. ATKINSON: Yes, I believe that is so.

Mr. WHELAN: Several life insurance companies in Canada did form mutuals, such as Confederation, Manufacturers, Sun Life, and North American Life; they all became mutuals.

Mr. ATKINSON: Yes.

Mr. WHELAN: This was done to prevent American insurance companies from buying them. American insurance companies cannot buy up mutuals in Canada?

Mr. ATKINSON: I am sorry, but I do not feel qualified to answer that question.

Mr. WHELAN: If an American company wishes to get into the life insurance business here, I do not believe there are any more companies it can buy up, so they would have to start a new company.

Mr. ATKINSON: That is so.

Mr. WHELAN: There are no more left that they can buy up. Most of them are now in mutuals and are already bought up. So any American company wanting to start up here has to start a new company.

Mr. ATKINSON: Oh, I think there are several insurance companies in Canada available to buyers—I mean available to American buyers.

Mr. WHELAN: Is it not true that a new company starting up enjoys more benefits than co-operatives in that it does not have to pay income tax for 20 years.

Mr. ATKINSON: That is a question I do not feel capable of answering.

The CHAIRMAN: Perhaps you might address your question to Mr. MacGregor.

Mr. ATKINSON: I would like to call on Mr. MacGregor at this time to explain this detail.

The CHAIRMAN: Would you like Mr. MacGregor to answer it?

Mr. WHELAN: Yes.

The CHAIRMAN: I wonder if Mr. MacGregor would be kind enough to enlighten Mr. Whelan and the committee on the question he has just asked.

Mr. K. MACGREGOR (*Superintendent of Insurance*): Mr. Chairman, it is rather difficult to answer this question without covering several other aspects at the same time.

Mr. WHELAN: Is it not true that if they do not declare dividends, they do not have to pay taxes for 20 years?

Mr. MACGREGOR: No sir, I know of no such rule as that. The income tax act has a section in it, namely section 30, which applies to the taxation of life insurance companies, and that section says, in effect, that a Canadian life insurance company—and it does not matter how it is owned—shall pay tax at the usual corporate tax rate on the net amount transferred.

Mr. BOULANGER: Mr. Chairman, I wish to follow this answer very closely but right now we have no translation at all.

The CHAIRMAN: I wonder if you would please wait for a moment.

Mr. WHELAN: This is my question, Mr. MacGregor: you say that if they do not declare dividends in the first 20 years, they do not have to pay taxes.

Mr. MACGREGOR: That would be correct.

Mr. WHELAN: You are not forcing them to pay dividends.

Mr. MACGREGOR: I think your question stems from the thought that it takes a good many years, and that it may well take 20 years, before a new life insurance company earns profits.

Mr. WHELAN: That is all I say; if we did not allow a new company to be formed, that is, a life insurance company, then the life insurance sold would otherwise be absorbed by other companies and they would be paying a tax on the dividends concerned. In this case there is nothing to show that the new company will make money; they may absorb millions of dollars in Canadian funds and not make any money and therefore not declare any dividend for 20 years, and all that time the Canadian people will not be sharing in the fruits of the operation.

Mr. MACGREGOR: Briefly I think the answer is that if no profits are earned, then no tax can be incurred. Consequently even if profits are earned, they are not taxed at the present time under the income tax act until those profits are transferred to the shareholders of the company.

Mr. WHELAN: That is what I say; they do not have to pay tax if they do not transfer to shareholders. But with the other companies already in operation here in Canada, the people of Canada can share in the fruits of operation of those companies.

Mr. BELL (*Saint John-Albert*): May I ask a supplementary question, Mr. Chairman?

The CHAIRMAN: I shall put your name down on the list. There is one speaker before you.

Mr. BELL (*Saint John-Albert*): There are statements hanging in the air.

The CHAIRMAN: I will allow you to pick them up in about two minutes or so.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think it would be preferable if we heard from Mr. Bell right now.

Mr. BELL (*Saint John-Albert*): I have one simple question so that the record will not look too incomplete. Is it not true that this income tax provision may be applied to all new insurance companies regardless of their ownership?

Mr. MACGREGOR: That is correct; it applies not only to new life insurance companies but also to all existing stock life insurance companies.

Mr. BELL (*Saint John-Albert*): No matter where the control of the company may be?

Mr. MACGREGOR: That is correct. Section 30 applies to Canadian life insurance companies which have capital stock. At the present time mutual life insurance companies are not taxed under the income tax act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like Mr. O'Kell to clear up some things in my mind. Perhaps he has already answered this question when I did not grasp it. In the first place, am I correct in my understanding that Simpsons-Sears will be the major stockholder in this company when launched?

Mr. O'KELL: No. Simpsons-Sears will have a 25 per cent interest only in the new company when it is launched.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): And the rest of it will be where?

Mr. O'KELL: The rest will be Allstate Insurance, which is owned in turn by Sears, Roebuck.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It will be wholly owned by Sears, Roebuck?

Mr. O'KELL: No, not wholly owned, but 75 per cent owned.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Can you clear up about the stockholding of Simpsons-Sears Class A shares being non-voting shares.

Mr. O'KELL: That is right, Class A shares are non-voting shares provided there are no arrears of dividends. There are 2 million Class B shares held by Simpsons-Sears Limited, as you know, and there are 2 million Class C shares held by Sears, Roebuck and Company, an Illinois Corporation.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The stock is held equally between the two?

Mr. O'KELL: Yes. I think I have made it clear that these Class A shares were developed in capitalization for ownership by employees—that is Canadian employees of Simpsons-Sears Limited, and it is a profit sharing fund.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But they would not be voting shares and they would have no control over the operation of the company.

Mr. O'KELL: They would not be voting shares at the present time, no.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Thank you.

Mr. McLEAN (*Charlotte*): What is the difference between your B and C?

Mr. O'KELL: There is no difference; they are equal.

An hon. MEMBER: One is voting and one non-voting.

Mr. O'KELL: No; they are both equally voting.

Mr. BELL: What would be the effect of this agreement if this bill did not pass? Would your present operations be able to continue? Would there be any rights and privileges which you would lose? Would any agreement which you have which has been referred to be in jeopardy?

Mr. O'KELL: If this bill did not go through and if the Allstate Life Insurance Company is not incorporated, Simpsons-Sears Limited would not, I am advised, be able to obtain an interest in the operations of Allstate in Canada. It is only with this incorporation that we can obtain an interest in the operations of Allstate.

Mr. BELL: In other words, here is a step which is being made towards some Canadian control.

Mr. O'KELL: Yes; I would endorse that. This is a 25 per cent interest which is being acquired by Simpsons-Sears Limited, and without this incorporation it would be impossible for any Canadian to acquire any interest in the Allstate company.

Mr. MACALUSO: Mr. O'Kell, what is the ownership of Sears-Roebuck in Simpsons-Sears Limited? Is it a 50 per cent ownership?

Mr. O'KELL: Yes. Simpsons-Sears has two million class C shares which are voting shares in Simpsons-Sears Limited.

Mr. MACALUSO: How many does Simpsons own?

Mr. O'KELL: An equal two million class B shares which are equal participation.

Mr. MACALUSO: And equal voting rights?

Mr. O'KELL: And equal voting rights.

Mr. MACALUSO: Further to the questioning by Mr. Aiken when he referred to the matter of a person dropping into the order office, say at Simpsons-Sears, to buy life insurance, if I were to walk into Simpsons-Sears, is there ever any intention in the future, say, to open up a booth in Simpsons-Sears to sell Allstate life insurance?

Mr. O'KELL: Mr. Macaluso, there are in the stores of Simpsons-Sears throughout Canada—and I am speaking now of departmental stores—what you refer to as booths which are leased to Allstate and their personal agents are in charge of these booths.

Mr. MACALUSO: I am aware of that and that is why I question the matter of life insurance.

Mr. O'KELL: Their agent could be on hand and could deal with the public.

Mr. MACALUSO: If this bill is passed and the company incorporated, what is the make-up of the board of directors going to be with regard to Canadian and American representation.

Mr. O'KELL: May I say that the board of directors of the Allstate Life Insurance Company are as set out here in the bill, and will continue this way. The directors listed in the bill are E. G. Burton, the chairman of the board and president of Simpsons Limited; James Button, who is the president of Simpsons-Sears Limited; Gordon Graham, who is the chairman of the board of Simpsons-Sears Limited and director of Simpsons Limited; John Illingworth, who is a vice president and regional manager of the Allstate Insurance Company; Norman Urquhart, who is vice president of Simpsons Limited and director of Simpsons-Sears Limited; and Mr. Atkinson whose name appears first and who is president of Allstate. Mr. Atkinson and Mr. Illingworth are both Canadians.

Mr. MACALUSO: Proceeding on to the proposed share structure as set out in the bill, your B and C class are your voting shares; but there is a policy now, is there not, in Simpsons Limited and Simpsons-Sears that the employees can purchase non-voting stock in Simpsons-Sears and also Simpsons Limited.

Mr. O'KELL: The shares purchased in Simpsons Limited are the shares listed on the Toronto stock exchange and are voting shares. In Simpsons-Sears Limited they are preferred shares and non-voting unless the dividend is in arrears.

Mr. MACALUSO: At the present time no employee of Simpsons-Sears has voting stock. I do not mean employees at the executive level but, for instance, a clerk or someone in the advertising department.

Mr. O'KELL: That is correct.

Mr. MACALUSO: In all likelihood if this company is incorporated, the class A shares here would have the same result; eventually there probably would be no transfer of the preferred stock from non-voting to voting stock.

Mr. O'KELL: Are you speaking of Allstate Life Insurance Company?

Mr. MACALUSO: Yes.

Mr. O'KELL: I do not think there is any question there of any different classification of stock in the Allstate Company.

Mr. MACALUSO: I am referring to voting and non-voting.

Mr. O'KELL: I do not think there will be any differentiation. There will be only voting stock in the Allstate Life Insurance Company.

Mr. MACALUSO: Perhaps I misunderstood. Class A, I believe, is non-voting preferred.

Mr. O'KELL: You are talking about Simpsons-Sears Limited capitalization. The Allstate Life Insurance Company stock will be only voting stock and therefore Simpsons-Sears Limited will have 25 per cent voting interest in the Allstate Life Insurance Company.

Mr. MACALUSO: At the same time it still comes down to the fact that Sears, Roebuck and Company owns 50 per cent of the voting stock of Simpsons-Sears Limited.

Mr. O'KELL: Yes.

Mr. MACALUSO: So it boils down to a 12½ per cent interest by Simpsons-Sears Limited.

Mr. O'KELL: Yes.

Mr. MACALUSO: So that Sears-Roebuck really owns more than 75 per cent of Allstate Life Insurance Company if this bill goes through.

Mr. O'KELL: Would you repeat that?

Mr. MACALUSO: With the combination of the 50 per cent ownership of Sears, Roebuck and Company in Simpsons-Sears, if Allstate Life Insurance Company is incorporated under this bill, Sears, Roebuck and Company will actually in effect own more than 75 per cent of this company.

Mr. O'KELL: That is correct.

Mr. TORY: If you look at the equity and look at the voting shares, it is 87½ per cent. So far as the equity of the company is concerned, it is slightly less than 87½ per cent, as more class A shares are issued. The reason class A were non-voting was to set up a partnership between Canadian and American interests. You can appreciate from the standpoint of both sides that there is strength in that equality; it is an equal partnership in all aspects. To make the class A shares voting would mean in effect that one share would control the company, one share on either side of the line. I think that is the important reason why the class A shares are non-voting. I think it is a protection for the Canadians as well as the Americans.

Mr. MACALUSO: So far as this committee is concerned, and I think most of the members of the house, when we are dealing with shares in these new proposed companies, I think we are concerned with the voting shares and not with the equity shares.

Mr. TORY: May I make one remark in respect of this 50-50 ownership; the 50 per cent ownership gives a very strong element of control in that it does not leave class A shares open on the market, which would allow the purchase of one more share by American interests.

Mr. MACALUSO: If I may interrupt, we understand what you are getting at. Although I agree, at the same time the problem which is facing us here is the control of votes in this matter, and that is what confuses me.

The CHAIRMAN: Votes are something which all members have on their minds every day.

Have you a question, Mr. Moreau?

Mr. MOREAU: Mr. Chairman, I would like to pursue this line of questioning. It seems to me we have been skirting around this problem, and I would like to ask a very direct question in this connection.

I appreciate the remarks made by Mr. Tory in respect of the holding of one more than 50 per cent of the stock. I realize the structure of Simpsons-Sears is not under discussion here and I do not think we have any business to deal with that—and I am in sympathy with it. In connection with this new incorporation, presumably the directors have some good reason for not making it a public company. I believe my question earlier was misunderstood; I was not suggesting it necessarily had to be a public company. I wonder if the directors had considered bringing in other Canadian financial interests, not necessarily a public offering but perhaps a private offering of some of these shares.

Mr. O'KELL: To the best of my knowledge it is not being considered at the present time.

Mr. McLEAN (*Charlotte*): Mr. Chairman, I would like to direct a question in respect of Simpsons-Sears. I understand they sell goods under contract; that is, the person to whom they sell must be insured. Am I correct in that assumption?

Mr. O'KELL: I did not quite understand your question, Mr. McLean.

Mr. McLEAN (*Charlotte*): At the present time the banks will make small loans and will insure the man who receives a loan, say, if he buys a car. Now, if this same man makes a contract with Simpsons-Sears, is it the habit of the insurance company to insure this man so that if he dies the contract will be paid.

Mr. O'KELL: To the best of my knowledge, there is no liaison of that kind between Allstate Life Insurance Company and our credit operations.

Mr. McLEAN (*Charlotte*): At the present time, if you have a big contract do you insure the man?

Mr. O'KELL: No, we do not; we do not write any insurance in that connection—and I am speaking of Simpsons-Sears.

The CHAIRMAN: Are there any further questions the committee would like to direct to the witnesses?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. O'Kell, you said earlier this was the only chance Simpsons-Sears had to obtain holdings in Allstate Life Insurance Company.

Mr. O'KELL: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is Allstate Life Insurance Company in Canada now in operation?

Mr. O'KELL: No. There is an Allstate Life Insurance Company, an Illinois corporation which is licensed under the Foreign Insurance Companies Act, to carry on business, and it is presently carrying on business. However, it is not possible, we are advised, for us to obtain an interest in the operations of Allstate until it is incorporated in Canada.

Mr. ATKINSON: This company has been functioning since 1961.

Mr. MORE: Will it continue to function if this bill is granted?

Mr. O'KELL: Yes.

Mr. ATKINSON: The Allstate Insurance Company which was established in 1961 will function in Canada. Is that the question you asked?

Mr. DAVID MILLER: (*Counsel for Allstate Insurance Company*): Mr. Chairman and members of the committee, I believe there has been a misunderstanding in this connection. If Allstate Life Insurance Company of Canada is incorporated Allstate Life Insurance Company of Illinois will continue to be licensed but will not be writing business in Canada.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You said they will not be doing what?

Mr. MILLER: They will not be writing business in Canada.

Mr. ATKINSON: We are contemplating transferring the business of that company to Allstate Insurance Company of Canada after the bill is incorporated.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In my own province of British Columbia Allstate Insurance Company writes quite a lot of car insurance.

Mr. ATKINSON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): How is this connected?

Mr. ATKINSON: This insurance is presently written in the Illinois company, the Allstate Insurance Company, and it will be transferred and re-insured in the Allstate Insurance Company of Canada, which was incorporated by this government two years ago.

Mr. DOUGLAS: Will it be transferred for a consideration?

Mr. ATKINSON: It is part of the arrangement that there will be a transfer of the assets of this company to the Canadian company, as a going concern.

Mr. DOUGLAS: Who owns the Illinois company now?

Mr. ATKINSON: It is owned by Sears-Roebuck.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is it entirely owned by them?

Mr. ATKINSON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It is a wholly owned company?

Mr. DOUGLAS: And I presume they are transferring the business they now have to the Allstate Life Insurance Company in return for some consideration of stock.

Mr. ATKINSON: Yes.

Mr. DOUGLAS: Have you any idea as to the amount of stock?

Mr. MILLER: The allocation of shares in Allstate Insurance Company of Canada is on a 75-25 basis; the capitalization would show 13,333 shares.

The CHAIRMAN: Order gentlemen.

Mr. DOUGLAS: Did you say 13,333?

Mr. MILLER: 13,333.

Mr. DOUGLAS: Which would be given to whom?

Mr. MILLER: That would be the total number of shares, of which there would be an allocation of 9,955 to Allstate Insurance Company and the remainder would be divided between Simpsons-Sears and the directors.

Mr. DOUGLAS: Would you repeat those figures for me.

Mr. MILLER: 9,955 and 3,333, and then 45 shares will be held by the Canadian directors as qualifying shares, as required by the Statutes.

Mr. DOUGLAS: What will each party pay for these shares?

Mr. MILLER: It is \$100 par value.

Mr. DOUGLAS: Is there any consideration given to Sears, Roebuck and Company for the business that the Illinois company is turning over?

Mr. MILLER: There would not actually be any consideration directly to Sears, Roebuck and Company because the 75 per cent equity interest is in Allstate Insurance Company of Illinois. Allstate Insurance Company of Illinois is 100 per cent owned by Sears, Roebuck and Company.

The CHAIRMAN: Have you a question, Mr. Moreau?

Mr. MOREAU: I have just one question, Mr. Chairman. I may seem to be belabouring this point but, in my opinion, it is really the crux of the bill, as far as I, and I am sure other members of this committee, are concerned. I phrased my earlier question in the past tense and I would say now, if parliament were to pass the budget resolutions which are presently under consideration, would the directors of this company give consideration to placing some of this stock in the hands of other financial interests in Canada?

Mr. O'KELL: Certainly I would say they would give consideration to it. I am speaking now for the Allstate directors, for whom I am not in a position to speak, but that is my interpretation of their intention.

Mr. MORE: If I understood correctly, if this bill is denied it still means that Allstate of Illinois can write insurance in Canada.

Mr. O'KELL: Yes.

Mr. MORE: Then, the passing of this bill means that we have taken a step toward Canadian ownership in that it would give $12\frac{1}{2}$ per cent interest to Canadian ownership. Is that correct? Is that the real difference between this and the present situation?

Mr. ATKINSON: Yes.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): I wish to make a short remark, Mr. Speaker. When Mr. Olson put his question a few minutes ago he wished to know why the shares had not been sold on the public market. If I remember his answer correctly it was stated that this entailed some risk, and this may have been the reason why these shares were not thrown on the market. To my mind the shares of an insurance company do not carry any risk, as personally I have in the past participated in the launching of three insurance companies and I have never considered that there was any risk in that regard. That is why I see no objection to the shares being offered to the public.

Mr. O'KELL: Perhaps I could reply to that and Mr. Atkinson and Mr. Tory may help me out.

I have always considered from an investing point of view that any investor who is purchasing any shares in a new company is taking a risk in its future operations as to whether he will ever receive dividends or whether he ever gets his money back. You heard from Mr. MacGregor say his experience in the insurance business led him to believe that a life company such as this starting up in Canada has many years to go before it will be showing any profits and, certainly, paying any dividends. Therefore, I would think a Canadian investor would be quite cautious of investing in this company.

On the other hand, it was asked why Simpsons-Sears Limited was so rash as to take this investment at the present time. May I say, to repeat my original statement, that this was the result of an agreement made 10 years ago at the time Simpsons-Sears was incorporated, and if we do not take what is offered to us now I do not think we will have the opportunity of participation in the future. This is why we are most anxious to have this Allstate Life Insurance Company incorporated so that we can take the interest, and we think we as a corporate shareholder are much better advised to take it than we would be if we were purchasing on the open market as a personal purchase.

The CHAIRMAN: Mr. MacLean, do you have another question?

Mr. BOULANGER (*Interpretation*): I should like to ask another question relating to the question asked by Mr. Côté.

I believe in the explanation which was just given as to the reason why shares are not put on the open market it was said that at that time Allstate did not have a balance sheet very favourable to show. This was the answer you gave at the beginning, if I remember correctly.

Mr. Côté refers to reasons concerning the individual shareholder, but in the first answer you said that the balance sheet of the company would not be attractive enough, and that was the reason why the shares were not put on the open market, is that right?

Mr. O'KELL: I do not know that I have understood the full import of the question, but I do repeat what I said before, that I would have thought that Allstate would be rather rash to offer shares to the public in its present state of operations.

Mr. McLEAN (*Charlotte*): What is the amount that Simpsons-Sear is investing?

Mr. O'KELL: The investment is in the amount of \$3,375,000.

Mr. McLEAN (*Charlotte*): Looking at the operation of insurance companies today, and looking at the price of their stocks, I think \$3,375,000 is a small

amount having regard to the size of this concern. I do not see why it would not go ahead and double that, complying with the 25 per cent rule and thereby avoid any difficulty.

Mr. TORY: We would still not comply with the Income Tax Act even though 50 per cent of the Allstate Company were held by Simpsons-Sears, because the way we feel in respect of Simpsons-Sears complying, is that it is really a Simpsons-Sears capitalization of 50-50 rather than 51-49 which prevents us from complying with the terms.

Mr. MOREAU: There are two definitions involved. I only cited one.

Mr. TORY: If Simpsons-Sears acquired 50 per cent interest in Allstate, and I believe I am right but I have not the budget in front of me, we still would not comply.

Mr. MOREAU: To clear this situation for the record, and I think it advisable to place this on the record, there is another definition which states that a company or corporation has 60 days immediately preceding its taxation year to have 25 per cent of its voting shares owned by individuals resident in Canada and or the other definition which I have cited to you.

Mr. TORY: Yes, but the only point I was trying to make was that if Simpson-Sears acquired a larger interest than 25 per cent of Simpson-Sears business I still feel they would not come within the definition of the degree of Canadian ownership and control in the act.

Mr. McLEAN (*Charlotte*): We are not referring to control, but referring to the 25 per cent as mentioned in the budget. Why can Simpson-Sears not obtain 25 per cent? This would only involve a few million dollars, and I am not referring to voting control.

Mr. TORY: If Simpsons-Sears acquired 50 per cent of the voting stock I believe we still would not comply with the definition regarding degree of Canadian ownership and control in the budget, because the minimum of 25 per cent interest has to be owned by a company controlled in Canada. In this case Simpson-Sears does not comply with the definition because it is a 50-50 company. We could raise the ownership or raise the percentage to 50 per cent ownership by Simpsons-Sears and still not comply with the definition regarding the degree of Canadian ownership and control.

Mr. McLEAN (*Charlotte*): Where does the control of a 50-50 company lie?

Mr. TORY: It is somewhere in the middle, between two individuals.

The CHAIRMAN: Are there any further questions?

Mr. DOUGLAS: Mr. Chairman, I should like to clear up one point. Mr. O'Kell said that Simpson-Sears was putting \$3,375,000, into the company.

Mr. O'KELL: That is right.

Mr. DOUGLAS: They are to receive 25 per cent equity for that investment?

Mr. TORY: Yes, in the two companies.

Mr. O'KELL: Right.

Mr. DOUGLAS: What is Sears, Roebuck putting in?

Mr. O'KELL: Sears, Roebuck already own the operation of the Illinois corporation and they are transferring all their assets into the two Canadian companies when formed.

Mr. DOUGLAS: Is the Illinois firm going out of business?

Mr. O'KELL: No, it will still keep its charter in Illinois but it will not continue to do business in Canada, I understand from what Mr. Atkinson has said.

Mr. DOUGLAS: And all it is turning over to the company is Canadian business for a 75 per cent equity?

Mr. O'KELL: Yes, 75 per cent equity.

Mr. DOUGLAS: And this business is so bad that it is in the red?

Mr. O'KELL: We are speaking of the life insurance which has just started. You see, there are two companies here, one of which is not the subject of this bill. The casualty company which was formed in 1960 will also be doing business in Canada and will be taking its business from the Illinois corporation. Then there is the life insurance company which is being formed by this incorporation and which will also be doing business under the Canadian charter when you gentlemen approve it.

Mr. DOUGLAS: But do I understand that Sears-Roebuck are putting into this fund for the 75 per cent the business of the Allstate Casualty Company and the Allstate Life Insurance Company, and for this they are taking 75 per cent equity which roughly looks like something over \$10 million? That is what their equity would be worth, over \$10 million, and yet we are told that one of the reasons we could not offer this to the public is that it is so unattractive that the balance sheet is in the red, and yet this unattractive business is going to get a stock worth over \$10 million?

Mr. O'KELL: I was referring to the Allstate Life Insurance Company which is the subject of the bill here. I said it was in the red. I am speaking of the life insurance company now.

Mr. DOUGLAS: Yes, but will the assets of the casualty insurance business be turned over to this company?

Mr. O'KELL: To the casualty company, the one that has already been formed by parliament.

Mr. ATKINSON: The Allstate Illinois Company will turn assets presently in existence over to the Allstate Life Insurance Company of Canada. The Allstate Life Insurance Company is a separate corporation.

Mr. DOUGLAS: What would be the relation between the two companies?

Mr. ATKINSON: They are independent of one another; they are two separate companies.

Mr. DOUGLAS: Then I will come back to my point: is all that Sears, Roebuck are putting up for a \$10 million worth of stock simply the life insurance business done by the Illinois company?

Mr. NUGENT: On a point of order, Mr. Chairman. I cannot see that this has anything to do with us at all. These people can make an agreement and get for their money what they like. These are private people doing a private business.

The CHAIRMAN: I do not think your point is one of order.

Mr. NUGENT: What is wrong with it? What does it have to do with this committee? What kind of bargaining they are making between private individuals is none of our concern.

The CHAIRMAN: The subject of incorporation is before us.

Mr. DOUGLAS: It is very important that a Canadian company, half owned by the Canadians, is going to put up \$3,375,000 for a 25 per cent equity in a Canadian firm. I want to know what the American company is putting up for its 75 per cent. I understand what it is putting up is 75 per cent of the business done by the Illinois Allstate Life Insurance Company which is so poor that it is in the red. It is not much of an asset that it is putting up. It is also turning over to the Allstate Casualty Insurance Company the casualty business. However, how does that give it an equity in this life insurance company?

Mr. MILLER: I may be able to answer your question. The Allstate Insurance Company of Illinois which will own a 75 per cent equity in these two Canadian companies is putting up the following: cash of over \$3 million.

Mr. DOUGLAS: To which company? The life insurance company or the casualty company?

Mr. MILLER: Primarily to the casualty company. We are discussing here the Allstate contribution. The Canadian insurance in force includes the equity in ownership and premiums—these will still apply with respect to the life insurance—all rights to future renewals of the Canadian business—and the following is a very important factor—all personnel and facilities of the Canadian insurance operation. Now the latter may be an intangible item but it is a very valuable one.

Mr. DOUGLAS: That is a debatable matter. Do I understand that the cash of some \$3 million is being turned over to the Allstate Casualty Insurance Company?

Mr. MILLER: Primarily.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What do you mean by primarily? How much?

Mr. MILLER: As Mr. O'Kell has pointed out, this is a package transaction between the two companies. The companies will operate separately but they will be operated by the same personnel.

Mr. DOUGLAS: I would like more information on this package deal because turning assets over to another company does not enrich this company. This company is giving to Sears, Roebuck, or to the Allstate Insurance Company of Illinois, a 75 per cent equity which is worth something in the neighbourhood of \$10 million. Now the fact that it is turning \$3 million over to another company does not increase the assets which it is turning over to this company because it is this company that we are concerned with.

Mr. MILLER: I think, Mr. Douglas, that your point is well made and that we should be discussing just the life company and not delve into the casualty aspect of the matter.

Mr. DOUGLAS: I am willing to do that. I will come back to my simple question: what is Sears, Roebuck or its subsidiary, the Allstate Insurance Company of Illinois, putting up as its 75 per cent equity in the Allstate Life Insurance Company of Canada? What is it putting in? Is it some business which it says is in the red and some personnel?

Mr. TORY: When we talk of a package deal there are two existing Illinois companies and there are two existing Canadian companies. Now, the Illinois casualty company has been doing business in Canada for almost 10 years. The casualty company business is valuable and it is not in the red.

Mr. DOUGLAS: How does that help this company?

Mr. TORY: That is one transaction, and when we have given a figure here this morning of a contribution of \$3,350,000 to be paid by Simpsons-Sears, it is to acquire an interest in both companies. Now, the life company, at its inception, will necessarily be a relatively small company as compared to the casualty company. I would venture to suggest that this is only a minor part of the total of the \$3,350,000. I cannot quote you a figure but only a relatively small portion of that figure could be attributed to the acquisition of an interest in the life insurance company. The valuable interest that Simpsons-Sears is acquiring and to which most of the consideration will be directed will be the interest in the casualty company, which is the company that has already been incorporated by parliament.

Mr. DOUGLAS: That is a different story.

The CHAIRMAN: I do not want to get into a debate as your chairman but I might point out that clause 3 refers to the capital of the company which is

going to be incorporated and of which only half a million dollars has to be subscribed.

Mr. DOUGLAS: Yes. Then we ought to have been given that information in the first place.

The CHAIRMAN: It is in the bill.

Mr. DOUGLAS: I am not asking for it now.

What cash is going to be put in by each of the two contracting parties, Simpsons-Sears on the one hand and Sears, Roebuck on the other?

Mr. MILLER: I would say as it is in the bill at the moment, \$500,000.

The CHAIRMAN: Maybe Mr. MacGregor would enlighten us on that.

Mr. DOUGLAS: I will leave that. There are two contracting parties, one putting up 75 per cent and one putting up 25 per cent. What is Sears, Roebuck putting up of that \$500,000?

Mr. MILLER: Seventy-five per cent.

Mr. DOUGLAS: And Simpsons-Sears 25 per cent?

Mr. TORY: The value of the insurance company in the casualty business, which is a valuable asset, is being turned over to the Canadian company by Allstate; and that in part is their contribution to this casualty company.

With regard to the life company, I would suggest there will be no part of the consideration, or only a very small part of the consideration, as part of the value of the existing life business of the Illinois corporation. I think it would be safer to say the original capital subscribed would be on the basis of cash, on the basis of three to one or 75 per cent to 25 per cent, because in this company the actual business will not be valued at any substantial amount to account for a part of the contribution of the United States company.

Mr. O'KELL: Mr. Douglas, I think the question is: What is being put up in this life insurance company? As it says in the bill, \$500,000 is being subscribed, 75 per cent, United States and 25 per cent will be put up by Simpsons-Sears Limited.

I would ask Mr. MacGregor, who I believe is familiar with this, if he would confirm that to the committee.

Mr. MACGREGOR: I think the answer is very simple, but from the department's point of view it would be a little different from some of the explanations that have been given.

The situation is indeed a complicated one.

Mr. BOULANGER: It was not when we started. We have just had a lot of questions making it so.

Mr. DOUGLAS: We have not had satisfactory answers. We have been told "in part" for this and "in part" for that. I want to know what each contracting party is putting into it.

Mr. MACGREGOR: May I make a few comments not only on the immediate question that has been asked but also on a few others.

The CHAIRMAN: If you can limit yourself to the points Mr. Douglas is making it might help the committee, and then afterwards if the committee want help on other questions they will ask you.

Mr. MACGREGOR: Mr. Douglas, as I understand it, this proposed new Canadian life insurance company, the Allstate Life Insurance Company of Canada, will be capitalized by two partners, apart from the qualifying shares that will be held by the directors.

My understanding is that it will be capitalized to the extent of 25 per cent by the Allstate Insurance Company of Illinois, which is the casualty company in the United States, and 25 per cent by Simpsons-Sears Limited in Canada.

There has been discussion about the transfer of the existing portfolios of business in Canada, business that is now in the United States company, the United States casualty company, where the existing automobile and fire business is, and a much smaller volume of life business in Canada that is now in the Allstate Life Insurance Company of the United States.

There has been discussion of these portfolios being transferred to the Canadian companies, one of which, the Allstate Company of Canada, has been set up in 1960; and this is the other partner.

Our understanding in the department is that the existing portfolio of fire and casualty business—mainly automobile business—which is very substantial and which is now in the Allstate Insurance Company of Illinois will in this package deal, as it has been referred to, be sold in effect to the existing Allstate Insurance Company of Canada; that is the casualty side of it.

The CHAIRMAN: I wonder if you would permit me just to ask for the benefit of the committee if you would determine or estimate what the 75 per cent and 25 per cent of capital amounts to, the capital to which you refer as that which is to be invested in the life company? To what does this amount in terms of dollars?

Mr. MACGREGOR: \$750,000 on the part of Allstate Insurance Company of Illinois; \$250,000 on behalf of Simpsons-Sears. That is apart from the directors qualifying shares.

Mr. CHAIRMAN: A total of a million dollars.

Mr. MACGREGOR: That involves the point I was just about to clear up. There has been talk in this discussion of transferring two existing portfolios, the automobile, fire and casualty, and also the life portfolio. It is not our understanding in the department that the small existing life portfolio will be transferred to this company, and that is what is complicating the discussion in my view.

Mr. DOUGLAS: It will not be transferred?

Mr. MACGREGOR: It will not be transferred; that is correct. The life insurance will not be transferred. I am not sure whether there is any misunderstanding between the representatives of the companies and the department in this respect, but we have had some discussions—though I must admit about a year ago—on this point. So far as the department is concerned, we have no objection to the transfer of a fire and casualty portfolio, if it is done in a proper manner; it is all from one company to another. Short-term policies and short-term interests are involved, and if a policyholder does not like the new company he can readily change, just like a boarding house. We hold different views on the transfer, sale or bandying about of long-term like policies; they are long-term contracts. If I take out a policy and choose my company, I do so in the expectation that the contract will stay with that company. Therefore we have expressed our view that the small existing portfolio of life business ought not to be transferred to this new company unless the circumstances were such as to make it desirable in the interests of the policyholders. And we do not think that is so. Our understanding is that both the United States insurance companies, the casualty company and the life company, will upon transfer of their portfolios to the Canadian companies discontinue writing new business in Canada but will each continue to be registered in Canada for the purpose of seeking reinsurance on the larger risks and so on. I include in that that it is my understanding that the small existing life portfolio of the company in the United States will remain in its own hands, and if it does there will be no complication about how this company will be capitalized; it will simply be 75-25.

Mr. DOUGLAS: So the reference in part has no meaning? There is no consideration for the transfer of the portfolio?

Mr. MACGREGOR: All the insurance department is interested in is the existing life business. We see it as our responsibility to ensure that the policyholders are protected.

The CHAIRMAN: I am afraid, Mr. MacGregor, I must ask you to terminate your remarks as soon as possible. The house is sitting at 11 o'clock.

Mr. MACGREGOR: I am almost through, sir. It is up to the owners of the companies to make their own deals, so to speak, and that is not the function of the department.

Mr. MILLER: On behalf of the company I would like to state that if there has been any confusion with respect to the transfer of this business, I would like to put it on record at this moment that we intend to abide by any rulings and regulations of the department of insurance and of Mr. MacGregor in that regard.

Mr. MACGREGOR: The only other comment is that I should like to correct a technical point Mr. Atkinson mentioned.

The CHAIRMAN: I would like to find out whether the committee feels that we can conclude matters right away or would like to sit this afternoon. If we sit for two or three minutes more we might be able to conclude. Is that the feeling?

Agreed.

Mr. MACGREGOR: Mr. Atkinson referred to the fact that Allstate Life of Illinois and Allstate Insurance has been registered in effect by me. I would merely point out that the certificates and licences are granted by the Minister of Finance, not by the superintendent of insurance.

The CHAIRMAN: Gentlemen, if there are any further questions you wish to address to the committee, Mr. Ryan has indicated he has one or two things he would like to say.

Mr. RYAN: Mr. Chairman, a statement was made by an hon. member in the house upon second reading of this bill to the effect that the Allstate fire and casualty department did not insure drivers under 25 years of age. Is that so or not?

Mr. ATKINSON: That statement can best be answered by the fact that we insure persons to the extent of 16.9 per cent of our total portfolio under the age of 25. Actually over 15 per cent of the licensed drivers in the country are in that group, so we actually insure in excess of that percentage.

Mr. RYAN: I would like to make a couple of comments: in respect to the extra-provincial licensing of the current Allstate setup in Canada I would like the committee to consider Mr. Whelan's remarks as to the 20-year income tax free position and to point out that this position will continue under the extra-provincial licensing system as it exists.

Secondly, in connection with Mr. Moreau's suggestion about the Minister of Finance's resolutions, those resolutions are not prohibitive and there is no suggestion that the minister desires to prohibit charters.

The CHAIRMAN: If there are no further questions are you ready for the vote?

Preamble agreed to.

Clauses 1 to 8, inclusive agreed to.

Title agreed to.

Shall the bill carry? (Agreed.)

Shall I report the bill without amendment?

(Agreed.)

Thank you, gentlemen. We shall adjourn now until November 1 when we shall resume our consideration of Bill C-5.



(HOUSE OF COMMONS

First session—Twenty-sixth Parliament)

(1963)

STANDING COMMITTEE

ON

CANADA, **BANKING AND COMMERCE**,

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

(FRIDAY, NOVEMBER 1, 1963)

(Respecting

Bill C-5, An Act to amend the Bankruptcy Act

(Primary Products under Processing)

WITNESS:

Mr. J. S. Larose, Superintendent of Bankruptcy, Department of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Jewett (<i>Miss</i>),	Pilon,
Boulanger,	Kelly,	Ryan,
Cameron (<i>Nanaimo-</i>	Kindt,	Rynard,
<i>Cowichan-The Islands</i>),	Klein,	Sauvé,
Chaplin,	Lloyd,	Scott,
Chrétien,	Macaluso,	Skoreyko,
Côté (<i>Chicoutimi</i>),	McLean (<i>Charlotte</i>),	Tardif,
Douglas,	Monteith,	Thomas,
Flemming (<i>Victoria-</i>	More,	Thompson,
<i>Carleton</i>),	Morison,	Vincent,
Gelber,	Muir (<i>Lisgar</i>),	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTION

Proceedings No. 2—Friday, October 18, 1963.

In the Minutes of Proceedings and Evidence—

Page 82, Line 5, should read:

Mr. GELBER: The witness put forward a suggestion.

Page 90, Line 4, and following, should read:

It would mean that in the event of a bankruptcy, the loan would be freed from the liabilities. The insurance company would step in, and the money would be there available to pay for it so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

Page 92, Line 32:

“bank rules” should read “bank loans”.

MINUTES OF PROCEEDINGS

FRIDAY, November 1, 1963.

(12)

The Standing Committee on Banking and Commerce met at 9.15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Cameron (*Nanaimo-Cowichan-The Islands*), Douglas, Gelber, Habel, Kelly, Klein, Morison, Muir (*Lisgar*), Nugent, Otto, Pilon, Ryan, Sauvé, Thomas, Whelan (18).

In attendance: Mr. J. S. Larose, Superintendent of Bankruptcy, Department of Justice.

Mr. Ryan and Mr. Gelber asked that certain corrections be made in the evidence of the Committee meeting of Friday, October 18th, 1963 (Issue No. 2). The Committee agreed to the corrections.

The Committee resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced Mr. Larose, who then made a statement about the effect Bill C-5 would have on present provisions of the Bankruptcy Act.

Mr. Larose was questioned concerning protection of the primary producer under present provisions of the Bankruptcy Act; rights of primary producers as compared to wage earners; the possibility of confining provisions of Bill C-5 to agricultural products only, and other matters.

The Chairman thanked Mr. Larose for appearing before the Committee on such short notice.

The Chairman reported to the members on the future order of business suggested for the Committee. Mr. Otto suggested that consideration be given to having future witnesses file their briefs for information of the Committee, rather than appear for questioning. He felt that the hearings had reached a stage at which there was duplication of evidence. The Chairman said that the Subcommittee on Agenda and Procedure would take this and other suggestions under consideration.

At 11.00 a.m. the Committee adjourned to Friday, November 8th.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 1, 1963.

The CHAIRMAN: Gentlemen, I see a quorum and consequently I call the meeting to order. This morning we will resume consideration of Bill C-5 which is an act to amend the Bankruptcy Act. We have with us this morning Mr. J. S. Larose, superintendent of bankruptcy. I thought, with your approval, that we might hear a statement from Mr. Larose, and then proceed to the questioning.

As you know, we have invited Mr. Larose to give testimony before the committee following a request that the committee made some weeks ago. Would this be acceptable?

Mr. RYAN: Mr. Chairman, before Mr. Larose commences, may I be permitted to make a correction in the Minutes of Proceedings and Evidence of this committee on Friday, October 18, 1963, at page 90. In the fourth line it is recorded that I said:

It would mean that in the event of a bankruptcy the loan would be free for any insurance company to use, and the money would be there available, so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

This does not make sense, and I do not believe it is what I said. What I intended to say is this.

It would mean that in the event of a bankruptcy, the loan would be freed from the liabilities. The insurance company would step in, and the money would be there available to pay for it so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

I would ask the committee to permit the amendment.

Then, at page 92 of the same evidence, in the fourth line of my statement the words "bank rules" should read "bank loans".

The CHAIRMAN: I take it there is no objection to these corrections. In that case, gentlemen, it gives me a great deal of pleasure to introduce Mr. J. S. Larose, superintendent of bankruptcy; he is an employee of the federal government.

Mr. J. S. LAROSE (*Superintendent of Bankruptcy*): Mr. Chairman, thank you for the invitation extended to me and for those kind words. Gentlemen, I have some serious misgivings about this bill, and with your permission I should like to place them before you briefly. In the first instance, bankruptcy legislation generally is aimed at distribution of the proceeds to the creditors subject only to certain well established and clearly defined priorities. These are obvious when one looks at the relative provisions of the various acts. Here in Canada we have established a system of uniformity in the distribution of the proceeds, and this was done in 1950. Prior to that time there had been a remarkable lack of uniformity and considerable differences throughout the provinces. My fear is that this bill will probably be the forerunner of other similar legislation which will in effect disturb this plan which I believe is fairly well accepted and fairly equitable.

Moreover, when you have an estate in which there are funds available for the creditors, section 95 of the Bankruptcy Act applies. This is the priority

section. Now, the proponents of the bill admit that there are few cases which would be covered by the bill, and yet this scheme of distribution to which I referred has been in effect since July 1, 1950, and this present act and its predecessor go back to December 1, 1932. Apart from this consideration it appears to me that there are others who are interested and affected by the provisions of this bill, and of course I am not referring here to banks nor am I referring only to the primary producer, and yet their rights would be affected and they would suffer if this bill were enacted.

In addition to that perhaps I should mention that, as I have referred to the bank, the Bankruptcy Act itself seeks to interfere as little as possible with the rights of secured creditors. I wonder if this is the proper form to attain what seems to be one of the objectives of the bill, or whether this should not be done in a consideration of the Bank Act as distinct from the Bankruptcy Act.

Finally, I see yet another problem in the practical application of the provisions of this bill, and this problem arises from subsection 2 of section 51(a) in the matter of the actual realization and distribution of the proceeds.

Gentlemen, I have given you very briefly my thoughts on the subject. I could amplify these, but I believe I will leave it to you and to any questions you may wish to ask to clarify particular aspects.

The CHAIRMAN: Gentlemen, I have before me no names yet. If anyone wishes to ask questions, please do so.

Mr. OTTO: Mr. Larose, from your brief opinion expressed about the bill it is pretty difficult to get down to specific questions. However, there are several things you have said, and one is that you thought this was more in keeping with the Bank Act than with the Bankruptcy Act. Is that correct?

Mr. LAROSE: That is true.

Mr. OTTO: Now, amendments to the Bank Act, if any, would be some time in coming; but do you not agree that this is a specific problem, a specific injustice in this matter of the private producers, that should be looked after before any revisions to the act are contemplated? Why do you say that this is specifically a problem for the Bank Act rather than the Bankruptcy Act?

Mr. LAROSE: I would say that the reason for that thought on my part is that there is a distinct reference in this bill to the Bank Act, and it seems to me obvious that one of the first and foremost effects of the bill does come to bear upon the provisions of the Bank Act itself.

Mr. OTTO: But surely you must agree that what we are discussing here is the distribution of the remainder of the assets in the event of a bankruptcy which could not be covered by the Bank Act. Do you agree or could you point out how this particular situation could be covered by the Bank Act?

Mr. LAROSE: I agree with you in that respect; however, with the exception of those items which are given precedence to the Bank Act, I think that it is the banks that are primarily affected.

Mr. OTTO: Do you think that we could incorporate, in any revisions of the Bank Act, the question of distribution of assets in the event of a bankruptcy or in the event of a failure?

Mr. LAROSE: I admit that is questionable but, on the other hand, it does occur to me that a revision of the Bank Act would be possibly a forerunner of any consideration of a corresponding revision to the Bankruptcy Act in this particular field.

Mr. OTTO: Although I do not want to become entangled in legal terms, it does seem to me that under this bill there is an attempt to remedy an injustice or, at least, a purported injustice in the distribution of assets in the event of

a failure and, therefore, distribution is the prime reason for this bill. Are you suggesting under the Bank Act that consideration be given to the whole matter of bankruptcy or the regulation and distribution of assets?

Mr. LAROSE: That is rather a large question. I would say in the matter of the distribution of the proceeds of a bankrupt estate the two acts are obviously rather intermingled and closely intertwined because you have section 88 of the Bank Act and, of course, you have the section of the Bankruptcy Act dealing with secured creditors, and you have that section which says, in effect, that the Bankruptcy Act does not interfere with the Bank Act.

Mr. OTTO: In your statement, Mr. Larose, you said that you were not in favour of this bill; you also said that you did not want to see the bankruptcy regulations as they pertain to the Bankruptcy Act disturbed, and you also said that the last change in the Bankruptcy Act was made 13 years ago; that is, I believe, in 1950. Is it your opinion that the regulations of the Bankruptcy Act, in their application to business today, do not need revision, or are they completely in keeping with modern business trends?

Mr. LAROSE: That is rather a pointed question and, certainly, I would be very much out of order in saying the Bankruptcy Act is sacrosanct and should not be interfered with. I hope I did not convey that impression. I might say that the act, as a whole, is being very carefully considered in all its aspects. Certainly, we do not feel that it is, shall we say, "a thing of beauty and a joy forever," which does not call for amendment; what I do say is that under this present scheme of distribution which was established, as you said, some 13 years ago, it has functioned by and large, I believe, quite well. It was established only after a careful consideration of the corresponding legislation in other countries and it was obviously also in consideration of the Canadian scene. I think, generally speaking, there has not been much fault to find with the provisions of section 95 and with the plan of distribution which this section sets up.

Mr. OTTO: Have you had occasion to read the evidence of previous witnesses in this committee?

Mr. LAROSE: Yes. I must say that my invitation to attend this present meeting was extended to me at the last minute, but I did in the small hours of the evening last night—in fact, until 1 o'clock—peruse the evidence of the previous meetings.

Mr. OTTO: Are you still of the opinion that under the present regulations of the Bankruptcy Act, and the Bank Act as well, the primary producer, as mentioned by some of the witnesses previously, is fully protected or adequately protected as compared with, say, other parties to a business transaction? To be more specific, do you think the primary producer is adequately protected against, say, a processor who has failed and whose assets, being the processed goods, have been seized by the bank?

Mr. LAROSE: I think you will agree that I am not free to comment on the Bank Act as such. In the matter of the Bankruptcy Act it is true there may be some inequity; however, as I pointed out, even those advocating this measure have not claimed, from my reading of the proceedings of the previous meetings, that there has been a considerable number of such cases, and this is over the many years that the act has been in force.

Mr. OTTO: The first witness, I believe, was the president of the Toronto-Dominion bank, and he made a statement similar to this. Are you saying because there are not sufficient numbers of people who are hurt or could be hurt this justifies not changing the act? Are you saying that it is of no importance if one person is hurt but that it is if 1,000 persons are hurt?

Mr. LAROSE: No, what I am saying is that if you have 1,000 people who are going to be affected by the adoption of this measure as opposed to, shall we say, ten, for the sake of argument, I think that is one of the factors to be considered.

Mr. OTTO: In this case we are considering the primary producer. In any amendment to the Bankruptcy Act or, say, in the adoption of this bill, who could be hurt by certain changes; presuming the primary producer will benefit, who could be hurt or affected by this bill?

Mr. LAROSE: I would say that all others with claims which would be made subsequent to the claims of the primary producer would be affected to the extent to which there were funds available.

Mr. OTTO: I am going to direct you questions which I have put to previous witnesses. Will you agree that the primary producer who is selling the produce to the processor does not assume an additional risk of losing everything in the case of someone else's bankruptcy? The primary producer being the farmer, does he, in your opinion, assume an additional risk, or is his risk finished when he has his crop in?

Mr. LAROSE: I am not too sure that I follow your question but I would say there is a risk for everyone who, in transacting with another, does so on a credit basis or through the postponement of the satisfaction of his claim.

Mr. OTTO: I will put it this way. Will you agree that the bank is in the business of taking risks?

Mr. LAROSE: I would say so.

Mr. OTTO: Would you say that in the conduct of business the person who supplies the cans, the labels and so on, expects a certain amount of bad debts.

Mr. LAROSE: Again, I would think so.

Mr. OTTO: You are also saying the farmer, who already has taken his risk with the weather—that is, the hail and so on—assumes an additional risk.

Mr. LAROSE: I think that is a fair assessment of the position. It is another risk that he takes, yes. And—

Mr. OTTO: I have one other question.

The CHAIRMAN: If I may interrupt, Mr. Otto, Mr. Larose did not finish his answer.

Mr. LAROSE: I would like to add that I think with the experience admittedly, which he has acquired down through the years, it is a risk which he perhaps takes knowingly. His experience has demonstrated this factor in the same manner as any person extending credit. His experience shows the field and the element of risk involved in any transaction in which he enters.

Mr. OTTO: Are you aware that in most of these cases the sale price of this produce is set up by a board, a group or an association?

Mr. LAROSE: Yes.

Mr. OTTO: Therefore, can you tell us how he could allow for the losses in the setting up of his price?

Mr. LAROSE: I believe that point was raised during the earlier proceedings, if I am not mistaken, and I do not feel I am competent to discuss the matter, particularly in view of certain remarks which, as I recall it, were made by someone speaking for one of the boards or producing agencies.

Mr. OTTO: The evidence we had was that the agency which sells the goods does not expect any losses. You made a comment to the effect that this bill, if adopted, would be the forerunner of other changes in the Bankruptcy Act. Would you elaborate on this and say what is wrong with more changes to the Bankruptcy Act, if necessary?

Mr. LAROSE: I can point up the problem in a way. Obviously I cannot say it will be a forerunner. I would say it might well be the forerunner, and I think I can say that from experience, because there have been certain innovations in other legislation which have come to bear on the Bankruptcy Act. These innovations were copied subsequently. Again I think it is safe to say if a measure such as this were adopted, then certainly it would establish a precedent. It is quite within the realm of possibility that this group—and if I use the word group, do not misunderstand me—might seek to better their own positions under the Bankruptcy Act.

Mr. OTTO: Do you or does the department have any plans for extensive revision of the Bankruptcy Act?

Mr. LAROSE: The answer is yes. The act has been under study for some considerable time. We have not yet completed the task because of the tremendous amount of work involved. We are examining the act from beginning to end. We have received numerous representations and these are being very, very carefully studied. I must add that each and every such representation must be considered not out of context, but in its application to the other provisions of the act, and the effect it would have upon the application of the act generally.

Mr. CHAIRMAN: If you would permit me to interrupt, I might say that your last question, Mr. Otto, was really not relevant to the subject.

Mr. OTTO: It is, Mr. Chairman. I am going to ask Mr. Larose whether his opposition to this particular bill is because of plans for complete revision of the Bankruptcy Act which he or his department has in mind, and it is not specifically an objection to this particular bill.

Mr. LAROSE: No; I do not think I would be quite honest and fair with you if I said my misgivings with regard to this bill are founded upon the over-all picture. I think I should say my misgivings relate specifically and directly to this bill and to the effect which it would have upon the underlying principles of the bankruptcy legislation in general, and our own act in particular, and more especially the scheme of distribution established by section 95.

Mr. OTTO: Thank you.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Larose, you mentioned your fears in respect of further legislation stemming from this which would upset what I believe you described as the scheme of distribution in bankruptcy. Do you consider that scheme is satisfactory? I have this in mind: Mr. Otto mentioned the can manufacturers who would have a certain allowance for risk in their calculations. I submit to you that the can manufacturers in any one instance only could have a marginal risk in relation to their total operations. Would you agree that is so?

Mr. LAROSE: I would say from what I have heard of the evidence given on previous occasions that position is well taken.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): On the other hand, would you not agree that the farmer, who may have a single crop, takes a total risk?

Mr. LAROSE: Yes; I think that is a correct statement again.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yet in the scheme of distribution that you are so jealous to protect, there appears to be no distinction between those two types of creditors.

Mr. LAROSE: Again I am not too sure that the Bankruptcy Act—and mind you I am not jealous in protecting the present scheme of distribution, nor in protecting the act as a whole, because it is under very careful study—I am not too sure that the Bankruptcy Act could ever begin to attempt to protect

satisfactorily each and any type of claim arising in a bankruptcy proceeding. The best that can be done in any legislation regarding bankruptcy and insolvency is to seek to obtain the most equitable scheme of distribution possible, having regard to the rights of the greatest number of people involved. Beyond that I do not think it is feasible, without hedging and introducing so many ifs, ands and buts; it would be difficult, if not almost impossible, to apply any act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Can you tell me how it happens that the rights of workmen under the Bankruptcy Act have been given preferred treatment?

Mr. LAROSE: Are you referring to the Bankruptcy Act as such, or to other legislation, Mr. Cameron?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, of course there is other legislation; but still that principle is recognized, is it not?

Mr. LAROSE: I think you will agree that in so far as other legislation is concerned I can make no comment. With regard to the Bankruptcy Act, this consideration is universal and I would say even in this bill it does not seek to interfere with the right of the wage earner. So, I repeat that this is a universal application; it is not limited to the Canadian act and the wage earner always has been given this particular priority. I believe the legislators of various countries are agreed that this is rightly so.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not agree that is so because the legislators in all parts of the world recognize if the worker loses what he has, it is a total risk of everything he has put in?

Mr. LAROSE: That may well be one of the reasons. I do not say it is the only reason.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What other reasons could you suggest?

Mr. LAROSE: Well, other reasons have been advanced, one being the peculiar position in which he finds himself, to some extent being at the mercy of his employer, and not infrequently being unaware of the approaching insolvency of his employer; and I think again, because of the fact that he is so entirely dependent upon wages since he has no other source of income. For all these reasons I think that down through the years he has been given this priority.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could you distinguish between the economic and social position, which you have so accurately defined, of a worker and that of the producer of one crop of vegetables for sale, probably to only one available market?

Mr. LAROSE: I think there is some distinction to be made to the extent that the primary producer is not in the same position as the wage earner. The wage earner, shall we say, is a servant, while the primary producer is his own contractor, if I may use that word.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But nevertheless the primary producer, the minute he is committed, whether or not you agree, is running a total risk when he gives his fruits, his entire year's labour, over to the processor.

Mr. LAROSE: That may be true.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In effect, is he not in a worse position than the employee or worker who can be collecting wages at intervals all along?

Mr. LAROSE: Possibly, but I should reiterate the remark that I made previously in this regard to the effect that in the vast majority of bankruptcies

of other than wage earners you have wage earners involved whose rights are affected; in other words, regardless of the element of risk, I think that we must agree that there are many, many more instances in which the wage earner is adversely affected by bankruptcy. I think it is for this reason among many others that he has been given a preferred position under the Bankruptcy Act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have suggested that rather than amend the Bankruptcy Act an attempt should be made, perhaps, to revise the Bank Act. I am not sure whether you have had time or occasion to consider the proceedings of earlier banking and commerce committee hearings. I recall that an attempt was made 10 years ago on the same basis as that of Bill C-5, with virtually the same evidence, and virtually the same groups appearing before the committee. You have suggested there is a danger if this bill is passed, that there will be a series of bills which will be continually altering the stream of distribution under the Bankruptcy Act. There is only one place in the Bank Act that I know of where you can have any effective action in this regard, and that is section 88. Therefore you have suggested to us that rather than proceed with Bill C-5 we should amend section 88 to remove this particular class of producers from its operations.

Mr. LAROSE: While I must admit that I have not had an opportunity to read the evidence given some ten years ago, I think I should correct what may be a wrong impression in the one being attributed to me, that I am suggesting that the Bank Act should be amended. Certainly I have no authority, and I would be going beyond the bounds of my position to make such a suggestion. But I do say that if an amendment is proposed, I wonder if such an amendment should not be directed in the first instance to the Bank Act in view of the implications of the bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I understood you to suggest that a more appropriate piece of legislation might be amended, namely, the Bank Act.

Mr. LAROSE: It would seem to me that this is attacking the Bank Act more directly, and while I would not wish to be put on record as suggesting that the Bank Act should be amended, by the same token, I wonder if the Bankruptcy Act is the proper forum for attaining the purpose which lies behind this bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Thank you, that is all.

The CHAIRMAN: Can everybody hear all right? If so, Mr. Whelan.

Mr. WHELAN: My first question is this: you say that this is constantly under consideration; but the provision that is being amended by the bill has been in the statutes of Canada longer than confederation. Is that not right?

Mr. LAROSE: I am sorry but I do not follow you.

Mr. WHELAN: You said that it was under consideration at all times to be changed. I say is it not right that this legislation that we are presently operating under, this section of the Bankruptcy Act, has been the law of Canada since before confederation, over 100 years or practically 100 years ago?

Mr. LAROSE: What I did say was that our Bankruptcy Act is undergoing a very intensive and far reaching study. This particular provision, that is, section 95, as such, is new, that is, since July 1, 1950. It replaced the provision of the former act which had been in effect since December 1, 1932; and I might add that the provisions of the previous act, that is those provisions which were in force since December 1, 1932 to July 1, 1950, had been applied in such diversified fashion that it was found necessary to established some degree of uniformity. It was for this reason that section 95 was enacted in the 1949 act.

Mr. WHELAN: I am speaking of section 51. I do not know if you have read the submission and comments made by someone from the bankers' association, but in my submission, they paid full tribute to that section 88, in that it was aimed at the then political and economic conditions of Canada. They pointed out that those economic and philosophical conditions of Canada in 1859 are not those which obtain in Canada in 1963. You have said that it is under constant consideration, yet these provisions are practically the same in 1963 as the ones we had in 1859. Mr. Otto said this is not helping the primary producers.

Mr. LAROSE: The answer, I think, is that the provisions to which you refer are those of the Bank Act and not of the Bankruptcy Act.

Mr. WHELAN: I can go further. I will not go too deeply into the submission that was made at that time, but I will read the explanatory notes of the bill:

—in effect, the processor gambles with the credit of the producer as risk capital—the bank clothed in the blanket protection of the producer's assets secured by section 88 of the Bank Act, the processor diapered with the limited liability of the Bankruptcy Act, while the primary producer goes bare of assets and stripped of credit.

Mr. LAROSE: You are referring here to section 88 of the Bank Act rather than the Bankruptcy Act despite the subsequent reference to a limited liability.

You will recall that the Bankruptcy Act as such does not interfere with the rights of secured creditors, whether it be the bank or any other secured creditor, in addition to the fact that there is a specific provision in the Bankruptcy Act excluding banks.

Mr. WHELAN: I have another question. You say a few cases are covered by the bill. From the evidence given on this bill I think this is true, but do you not feel that in a democratic country we should legislate for minorities as well as for majorities?

Mr. LAROSE: That is true, but within certain limits. I think my previous remarks expressed my views on the question. You admit there are few cases, and I think the other witnesses did likewise. If you offset these against the considerable number of other groups—and again I use that word for want of a better one—which are affected by the Bankruptcy Act and by the scheme of distribution established by section 95, I think it is a very difficult matter to begin to make exceptions, because once you do this then you are open to similar suggestions to the effect that other exceptions be made. Then I am afraid the end result would be that you would have a very unwieldy act and, more particularly, a very unwieldy scheme of distribution.

Mr. WHELAN: You made the statement, I believe in answer to a question by Mr. Otto, that the primary producer took this risk knowingly. Perhaps this was in answer to Mr. Cameron; I am not sure. This I challenge because we have marketing boards in some of the provinces and even as late as last year the board, having the right to refuse or ask the department to refuse a licence, wrote to a bank and the bank, three months before the company went into bankruptcy, stated that this company was in a good financial position and that there was no objection to a licence being issued. How can you then say that they take this risk knowingly?

I dispute this strongly and I cannot understand why you should make that statement.

Mr. LAROSE: I am in no position to take exception to that particular case, which I recall. I do not feel it would be proper for me to comment on that particular aspect of the matter when it concerns the board in its own operation and in its relationship with the bank.

Mr. WHELAN: In conjunction with that, Mr. Cameron asked about primary producers having the same rights as wage earners. I think what Mr. Cameron had in mind was that a good many of our primary producers produce one crop. They may have to borrow thousands of dollars from the bank in order to pay wages to people who have worked for them, but they may not get one cent if the processor goes into bankruptcy. However, the same bank or another bank which lent the money to the farmers to produce the crop is the bank which puts the processor into bankruptcy; so the bank does not lose at all.

Do you not agree that the primary producer in this case should be in the same position as the preferred creditors? I would even go so far as to say that he should be entitled to at least the wages that he has paid out and for the time that he has put into the production of his product.

Mr. LAROSE: I do not think your last suggestion about the producer's own time could be applied because I think the same suggestion might also be made with regard to others. As to wages which he may have paid out, again I do not feel competent to discuss legal aspects of subrogation.

Banks are secured creditors. They have taken security and they rely on that security. As I mentioned earlier, the Bankruptcy Act has never sought to interfere with the rights of security creditors of whatever classification they may be, whether it be the bank under section 88, a mortgage creditor, a lien holder or any other secured creditor.

Mr. WHELAN: You have not answered the question clearly enough for me. I should explain that I am not a lawyer.

I am trying to get across the fact that there is a feeling that we as primary producers should be protected at least for the cost of the wages that are put into the crop.

Mr. LAROSE: I am not too sure of that. I am not too sure whether or not this is the result of the plan of distribution envisaged by this act, but I do not quite see how this could be applied within the scope of the Bankruptcy Act, and again I say that a similar argument might be advanced by others. It would be most difficult to conceive of any scheme of distribution which would attempt to right all grievances. I do not see how it would be workable.

Mr. WHELAN: Then let me ask a further question. We say the losses were not great, and you acknowledge this. Why then is there the strict protection for the banks? Their risk is very negligible. For a small primary producer, however, this system can mean complete annihilation.

Mr. LAROSE: The banks are secured creditors, and in extending credit they must assess the credit risk involved. Once they have obtained this security the Bankruptcy Act, I repeat, does not interfere with it.

Mr. WHELAN: How many countries have a similar system? You say you have made a study. Have you studied what other types of protection the banks enjoy, and other preferred creditors?

Mr. LAROSE: Our scheme of distribution here in Canada was evolved after a careful consideration of the corresponding legislation in the United States, England, Australia and New Zealand.

Mr. WHELAN: In the United States do they not just borrow on a straight note?

Mr. LAROSE: Despite the fact that I have just come back from the United States I am afraid I cannot answer that question offhand.

Mr. WHELAN: Mr. McLean gave evidence last week or the week before to the effect that he had borrowed money in this way through Boston for the processing plant he runs at New Brunswick.

Has the particular section in the Bankruptcy Act with which we are dealing ever been changed? Has it ever been changed since it was first initiated?

Mr. LAROSE: This bill seeks to introduce a new section to follow section 51. I am not sure that your reference is related to section 51; I think rather you are referring to the scheme of distribution as such, are you not?

Mr. WHELAN: That is right, yes.

Mr. LAROSE: This scheme of distribution was very considerably modified by the act of 1949 which came into force on July 1, 1950.

Mr. WHELAN: I think Mr. Cameron has pointed out too that in 1954 the matter was presented to the Banking and Commerce committee, but nothing has been done since that time. No changes have been made to give the primary producer any protection whatsoever. What alarms me is the suggestion that this should possibly go through the Bank Act. I believe it is every ten years that the Bank Act is supposed to be revised. Does that mean that we will wait for another ten years?

Mr. LAROSE: Again I am not confident to discuss the Bank Act or amendments to that act, but my primary concern is with the Bankruptcy Act and its purposes.

Mr. MUIR (*Lisgar*): Well, Mr. Larose suggested that the amendment does not take into consideration risks undertaken subsequent to risks assumed by the primary producer. Am I right that, if this amendment went through, that you would not be protected from subsequent risks?

Mr. LAROSE: I am not too sure that I follow the implication of your question, Mr. Muir.

Mr. MUIR (*Lisgar*): I think you mentioned, if I heard you right, that if this amendment were to be accepted, the people who have taken risks subsequent to those assumed by the primary producer would not be protected under this amendment.

Mr. LAROSE: Are you referring then to the man who supplies the cans, and so on?

Mr. MUIR (*Lisgar*): And any other credit that he needs after he has received the produce from the farm.

Mr. LAROSE: Certainly I think it is safe to say that any person extending credit as such who was not a secured creditor is not protected.

Mr. MUIR (*Lisgar*): Other witnesses have given evidence that some producers use the primary produce to finance their total operations from start to finish without using some of the credit they had received for the produce to even pay an initial payment to the primary producer. In other words, they have taken in the whole crop to process without paying out anything whatsoever to the primary producer and have used this for their financial operations.

Mr. LAROSE: That may well be. I have gathered that from the testimony of some of the previous witnesses.

Mr. MUIR (*Lisgar*): In that case then, would you not think that the primary producer is entitled to more protection than those who take subsequent risks on this operation?

Mr. LAROSE: Your point is perhaps well taken, but the first question that comes to mind is the question of the feasibility of making an appropriate distinction and of implementing any such suggestion.

Mr. MUIR (*Lisgar*): That is the point we are trying to establish here, I think. I believe you made the statement that the primary producer knew the risks he took when he delivered his produce to the processor. Is that correct?

Mr. LAROSE: Yes, within limits.

Mr. MUIR (*Lisgar*): And yet he enters into a firm contract with the processor that he shall grow the produce and the processor shall process it for him. However, he has no way of protecting himself if the contract is broken by a bankruptcy.

Mr. LAROSE: I would say that a similar remark would apply to any person extending credit who has not taken security.

Mr. MUIR (*Lisgar*): Well, the security in this case I would think is the contract because the processor not only puts up the produce in many cases but the produce finances the operations, and should finance the operations. But if the processor gets involved in other debts that the produce will not cover, then you have the primary producer at the mercy of the processor.

Mr. LAROSE: Does not the answer lie then within the contract itself as such?

Mr. MUIR (*Lisgar*): How would you suggest that you could have a different type of contract? The farmer grows the stuff and he cannot let it rot in the field. He enters into the contract with a man who processes it, and yet if it is processed and the man goes broke, he can let it rot in the field for all the good it will be to him.

Mr. LAROSE: I am afraid you are addressing this question to the wrong person.

Mr. MUIR (*Lisgar*): Another witness—I believe it was Mr. MacLean, and he should know because I think he is a processor—said that there was no reason why a processor should use all the farm produce for financing the operation without at least paying an initial payment.

Mr. LAROSE: I would not say that I can find any fault with that statement, but the question that occurs to me is whether or not the solution, if there is a solution to the problem, lies in the Bankruptcy Act.

Mr. MUIR (*Lisgar*): I would suggest that it does because it seems to me that under the present act there is not enough protection given to the man who assumes the first risk, and he does assume the first risk because the employment comes after, the producer of the cans comes after, the whole operation is subsequent to the risk assumed by the man who supplies the produce outside of the factory building itself. And yet, under the present system, this producer does not receive the protection that I would think one who assumes the first risk should.

Mr. LAROSE: But it seems to me that there are others who assume similar or corresponding risks and who, in the event of a bankruptcy, are not given a preferred rating.

Mr. MUIR (*Lisgar*): They all do this after the primary producer assumes his risk.

Mr. LAROSE: Possibly in a specific case which you have in mind, but in other transactions I am not too sure that it would be entirely accurate to make such a blanket statement that these are all subsequent risks.

Mr. MUIR (*Lisgar*): Other than the risks involved by the processor himself when he builds a plant any moneys that are used for the operation of the plant must surely come after the initial risk of the primary producer, because without the produce the plant does not operate.

Mr. LAROSE: That is true, but could not the same be said of other types of operations?

Mr. MUIR (*Lisgar*): Would you explain that a little further for me please?

Mr. LAROSE: Any form of manufacturing I think would fall somewhat within the same general qualifications, would it not?

Mr. MUIR (*Lisgar*): That could be, but perhaps we are dealing with a different situation here where you have a large number of small producers, while in other cases it would not be the same, such as in forestry, if you have that in mind.

Mr. LAROSE: That is possible. You may have a great number involved, but I do think you will find that you would have a large number involved also in

the other field which I mentioned. In addition to that, it seems to me from the evidence I have read that in point of fact the actual number of primary producers affected, at least in proceedings to date, has not been as considerable as might have been indicated.

Mr. MUIR (*Lisgar*): We go back to the point brought up by some other gentlemen that the fact that we have not too many of these situations does not mean that it should continue to operate.

Mr. LAROSE: I appreciate the validity of that remark, Mr. Muir, but, on the other hand, if any change would adversely affect a large number of producers, I think that is a factor which should be given some consideration.

Mr. MUIR (*Lisgar*): Do you think the amendment would affect a larger number?

Mr. LAROSE: I think so.

Mr. MUIR (*Lisgar*): Perhaps in terms of a larger number of dollars but not in terms of a larger number of people.

Mr. LAROSE: I would say yes, in both cases, for two reasons; the only creditors who would be ranked ahead of the primary producer under the bill would be those seeking wages, salaries or other remuneration; all other claims under the Bankruptcy Act—and they would be considerable, not only dollarwise but in point of view of numbers—would lose out in any such change.

Mr. MUIR (*Lisgar*): But the point I would like to leave with you is that although this may hurt other people, even those who were willing to make the loans for that operation, these things were all done subsequent to the risk involved by the producer who delivered his produce to be processed. The point I would like to make is that although other people are hurt when they enter into the transaction they have a better way of finding out the financial position of the processor than the producer does and, if they assume the risk, they are more or less assuming it with their eyes open. I think I can drop the subject there.

The CHAIRMAN: Have you a question, Mr. Klein?

Mr. KLEIN: Mr. Chairman, before asking a question I would like to make a preamble.

The CHAIRMAN: That is what we expect from lawyers.

Mr. KLEIN: We seem to be living in an era in which we are moving away from ownership by the owner. We are going into an era in which we have the lease back arrangements; we are going into an era in which instead of the builder owning the land upon which he is putting up a building, he is entering into an emphyteutic lease and never owns the land; we are living in an economy in which we are told somewhere in the vicinity of 75 per cent of the people who are driving cars today do not own them, and they never will. This seems to be the area in which we are now drifting.

As a matter of fact, if by some fiction of the law every creditor could on one day ask for payment from his debtor it would develop into an awful mess. I am not making any defence of section 88 but, perhaps, in that sense section 88 was ahead of its time rather than antiquated, if we consider the direction in which the economy is now running. It would seem to me all we are doing here is perhaps confusing the small farmer with bigness. If we can call it an industry, for want of a better word, the only industry that did not get big in this country or in any other country for that matter is the farming industry. The farming industry itself is the only thing that has remained, for the most part, small. I think it is wrong to even suggest that the farmer should assume a risk because I do not consider the farmer is in the same position as the supplier of materials. He supplies a product but he is not in the same position of assuming a risk as the supplier of materials because, for the most part, the

product the farmer sells is the result of his own sweat. I would think we perhaps should start thinking in terms of the farmer, not as a primary producer but perhaps in terms of the provisions that were made under section 95 of the Bankruptcy Act, in respect of the question of distribution, where we have made protective clauses for the wages, salaries, commissions and compensation of a clerk, servant, travelling salesman, labourer and so on, because the farmer is more in the classification of a labourer than he is in the classification of a supplier of materials.

Now, this thought comes to me only this morning, and I profess I do not know how we can provide for that protection. But, if we think in terms of the farmer as a labourer, as we do in terms of the labourer, in which, for example, under section 95 (d) the servant, travelling salesman, labourer and so on is protected to the extent of three months of his salary next preceding the bankruptcy, to the extent of \$500. I do not know whether or not we could work something like that into the Bankruptcy Act for the farmer. I do not know whether \$500 would be the figure or whether it would be 10 per cent of the amount of the credit that he has advanced but surely we must start thinking about this bigness and, as the bigness is getting bigger, the farmer gets smaller. If the farmer is the backbone of this country I think we have to do something to protect him so that there will be farmers left. Now, how this is to be done or to what extent is questionable. Whether it would be equitable to the extent of 10 per cent of the amount he has advanced so he will have some money left to carry on a crop for next year if he has lost all the proceeds of this year's crop is a question we will have to consider. But, we have to start thinking in terms of doing something for the farmer and keeping him aloft and in existence. I do not know how this is to be done.

My question to you is this: In the discussions that are going on in connection with the revision of the Bankruptcy Act is any consideration being given to the position of the farmer? Is he being given any extra special consideration under the Bankruptcy Act?

MR. LAROSE: You have raised so many different issues that I am not sure that I will recall them all. You will forgive me if I overlook any and I trust you will refresh my memory if I do so.

At the very outset you discussed the Bank Act. I must refrain from commenting on it. I will leave you to debate with Mr. Whelan whether or not it is antiquated.

You compared the farmer with the wage earner. I am not too sure that the comparison is an appropriate or adequate one. But, going beyond that, there is the larger issue, whether or not within the scope of section 95 it would be feasible to adopt one or the other of your alternative suggestions. You have suggested, for example, section 95 (1) (d) might be modified in some manner or other to provide for such a case but I think this only serves to underline my earlier remark concerning the difficulties which would be encountered in attaining any such measure, apart from the fact of the bearing it would have upon all subsequent claims. It would not only be difficult to implement but would interfere seriously with the rights as they now stand of all creditors who would be ranked subsequently to those to be covered by section 95 (1) (d).

MR. KLEIN: If I understand you correctly you do not feel it feasible to treat the farmer in the way I have made a distinction in the term of labourers.

MR. LAROSE: I must confess my first impression is that it would be most difficult to provide for such a case. Even if this could be done, I think it might well, eventually, be necessary to extend that thinking to other groups and broaden the scope so considerably that you would be upsetting considerably the present scheme of distribution which has been functioning so well. A further

thought is that other measures have been introduced in the past for the relief of the farmer. I am not in a position to say how effective they are, or whether or not they are sufficient. However, I repeat that to attempt a distinction under section 95 would, as I see it, present many problems.

Mr. KLEIN: It would seem to me that the reason why there has been a distinction made in the case of the category suggested under section 95 (d) is that in those instances the persons involved have given everything, have nothing else to give, and if they do not get back something for what they have given, they will starve. This seems to be the reason for section 95 (d). I would say in many instances the farmer is in the same position; in most instances he has given his full crop; he has nothing else; he has nothing to fall back on. We have to give him something to survive with as we are doing in section 95 (d).

Mr. LAROSE: I think there are other groups which might make the same claim.

Mr. KLEIN: If their claim were valid, it would mean that they should get relief. Simply because we are afraid others will ask for relief is no reason to deny a just demand by people who require relief. I do not think we should deny relief where relief evidently is needed because we are afraid others will demand the same thing.

Mr. LAROSE: Granted; but what I envisage here is that eventually you might remove the vast majority of the claims out of the general classification of unsecured creditors and advance them to the position where they would be covered by paragraph (d), and any subsequent creditors, I would say, in effect would be eliminated.

Mr. KLEIN: It seems to me that governments of all countries, for example, recognize the need of farmers, and have given subsidies while they do not give subsidies to other sections of the economy. I think the farmer is so unique in the scheme of the economy now, the economy of the twentieth century, that he is apt to get snowed under in this tremendous bigness into which we are going.

Mr. LAROSE: Please do not misunderstand me. I am not averse to the farmer or to acceding to any legitimate rights. My only thoughts are those I have already mentioned. I am not at all seeking to discriminate against the farmer.

Mr. KLEIN: I am not suggesting that for a moment. I am only suggesting we should consider putting them in a unique category, because if we do not we are discriminating against them.

Mr. LAROSE: To some extent, would you not say they have been so treated by other forms of legislation aimed at bettering the lot of the farmer?

Mr. KLEIN: Yes, but with all this betterment, if he is going to lose everything because of the processor going into bankruptcy, then we have not helped him at all. All we have done is put the processor in a position to exploit him. If we do not do something, all the processor would have to do is get the farmer to sell his crop to him and then he can go to the bank and say: "Look at all the collateral I have; I have the crop belonging to the farmer; I do not want to put any of my money in; I would like the farmers to finance me so that I can go to you under section 88, and you will give me all the money I want, and the farmer can worry about whether or not I come through." It seems to me there is an inequity somewhere.

Mr. GELBER: I would like to make a correction on page 82 of our Minutes of Proceedings and Evidence. I was asking questions of the witness and I took a remark which he made. This is at the top of page 80. I thought he had made a more general proposal with regard to a change in the Bankruptcy Act

than was implied in asking for a consideration for the primary producers. At page 82 I am quoted as saying:

I just put forward a suggestion.

I understood the witness to make the suggestion. I would like the record corrected at the top of page 82.

I rather think that Mr. Whelan, Mr. Cameron and Mr. Klein are speaking of a one-crop farmer who only has one customer. I am interested in the proposal in Mr. Whelan's bill, because I am interested in other suppliers as well. Actually, I think there is a great deal in his proposal and in the suggestions made by Mr. Cameron, Mr. Klein and Mr. Whelan. I wonder what Mr. Larose thinks of the situation in the province of Quebec where I believe there is protection in respect of 30-day goods in the event of bankruptcy.

Mr. LAROSE: I am not too sure what you are pointing at, or what you are seeking.

Mr. GELBER: My understanding of the evidence given by Mr. Musgrave and others at the last meeting is that their chief objection to the Bankruptcy Act is that the merchandise they have delivered to the processor which is not processed becomes part of the estate in the event of bankruptcy and that the bank has priority. What they want is that the goods which are not processed be available to them in the event of bankruptcy. I am wondering what Mr. Larose thinks of the situation in the province of Quebec where it is my understanding that where merchandise has not been processed and has been delivered within 30 days of bankruptcy, there is a return of that merchandise. What do you think of that arrangement?

Mr. LAROSE: From your remarks I gather what you are suggesting in effect is that consideration might well be given in the other provinces to the introduction of legislation similar to that relating to 30-day goods in the province of Quebec.

Mr. GELBER: What would you think of that being part of the federal legislation?

Mr. LAROSE: Well, in respect of the 30-day goods provision as such, as I understand it, in the scope of the banks, their authority did not come to bear on bankruptcy and insolvency directly in the first instance.

Mr. GELBER: Do I understand that you have no comment in respect of whether it should be incorporated in the federal legislation?

Mr. LAROSE: I think all I would say at this point is that the suggestion which is noted in the minutes of the proceedings will be considered. I do not think, however, that I am free at the moment to comment, either on its advisability or feasibility under the circumstances.

Mr. GELBER: I understand your position. It is my feeling that with section 88 the banks will encourage suppliers to send in goods because it protects the position of the bank and protects the guarantee of the debtor. I think this breeds too much inequity. I wonder if consideration could be given not only to the 30-day goods provision, but also to unprocessed goods and goods in process, which is a more difficult problem.

Mr. AIKEN: Mr. Chairman, I think the field has been covered pretty well. I would like to ask a couple of questions of Mr. Larose. Bill C-5 is very broad in its terms, because it includes not only protection in respect of agriculture, but also forests, mining, sea, and so on.

Is part of your fear about this bill that it is too broad in its implications, and instead of protecting those who need protection, it might extend a complete new type of protection across the board?

Mr. LAROSE: Certainly it would introduce an entirely new concept into bankruptcy legislation in this country.

Mr. AIKEN: Would your opinion change any if the bill were confined to agricultural products?

Mr. LAROSE: That is rather a leading question.

Mr. AIKEN: Yes, I know it is difficult.

Mr. LAROSE: It is one which I must confess I had not anticipated, because of the actual phraseology of the bill and the discussions which have surrounded it to date. But I still think that this would lead back to one of my original remarks to the effect that even were this bill so worded, there is no assurance that subsequently the others mentioned would not seek similar legislation.

Mr. AIKEN: Well then, may I narrow it down one more step and leave it there. Would you feel that if the act were limited to those for whom it is particularly designed, that is, the single crop producers with single outlets, by keeping it very narrow in its concept, you would still have the same objection?

Mr. LAROSE: I think that question is really tied in with your previous query, and to some extent therefore the same answer would apply. Apart from that, I think there would be a further problem involved, namely that of interpretation, and a ruling whether in particular instances a particular person fell into such a particular category.

Mr. AIKEN: In other words, your main objection is that it might open up a field which would be difficult to define in its application across the board?

Mr. LAROSE: That is one of the objections, yes.

Mr. AIKEN: Thank you.

The CHAIRMAN: Now, Mr. Whelan.

Mr. WHELAN: I have only one question. You referred to those other people in opening up the field. I know of no other section of our social organization that has not the protection that these primary producers need in all these sections, and I do not care what one you mention. You used terminology here that I did not understand, that we are going to open it to a field of other people. I know of no other class or industry that does not enjoy more protection than does the primary producer.

Mr. LAROSE: Again I am not too sure of the implications of your remarks, unless you are referring to one of two things: your security creditor has security upon which to rely; and if you are referring to Mr. Aiken's suggestion of a change in section 51-A-1, the other people, if I may use that word again, according to Mr. Aiken's remarks, would be those interested in the products of the forests, quarry, mine and so on.

Mr. WHELAN: You said it would be opening it up to all the other creditors, and you used the term creditors. There is no other creditor who is in the same position as the primary producer in supplying his products.

Mr. LAROSE: Probably not entirely in the same position, but there are others, actually, who might be said to be analogous and who at the present time are classified as unsecured creditors.

Mr. WHELAN: A primary producer may obtain such protection when he has quarried the stone for use in tombstones. But after it is changed in shape, form, and design, he loses identification, the same as we do with tomatoes. Once they are put into ketchup we can no longer identify them. On the other hand the can manufacturer can identify his cans by serial numbers, and theoretically he may go in, open them up, and remove the fruit from them and take back the cans. If possession is one-half the battle, then he can go in and seize his equipment and run out, and you would have to have a court action

to fight him. We would not dare to do that, because if we did, we would be classed as thieves, and even if this was our product, we could not properly identify it.

Mr. LAROSE: I believe this very question has been raised in court in one of the cases mentioned, so therefore I am not free to comment.

The CHAIRMAN: I have no other members who desire to ask questions. May I now, on behalf of the committee, extend our thanks and gratitude to you, Mr. Larose, for being here this morning and answering questions for members of the committee. May I take this opportunity to apologize to you for the short notice. In actual fact it was requested that you should appear at some future date. However the witnesses who were to appear this morning were unable to get here, and that is why you got such a short notice. But in spite of such short notice I consider that you have done a good job. I would not want anybody to think by this that I am pro or con the opinions which you have expressed.

Before adjournment, with your permission, I would like to announce the future order of business that we have been able to determine. Next Friday, November 8, 1963, we shall hear the Canadian Credit Men's Association Limited. They will be our witnesses at that time.

Mr. WHELAN: Whom do they represent?

The CHAIRMAN: They are a national association having to do with men granting credit. If Mr. Whelan would like to know more about them and be prepared for them I understand, unofficially, rumour has it that they will oppose your bill.

On Friday, November 15, we shall have with us the Ontario Fruit and Vegetable Growers Association; on Friday, November 22, we shall have with us the deputy minister of agriculture, Mr. Barry. This has not been confirmed, but it would appear that it might be the case. And on Friday, November 29, we shall have with us the Canadian Food Processors Association. That is as far forward as we see at the present time.

Mr. OTTO: May I make some remarks? With all due respect, I think that most of the members of the committee have heard just about everything that could possibly be heard on this matter. So I wonder if it could not be arranged that these people present their briefs in writing, which we might go over at one meeting and come to a conclusion—in possibly one meeting, say a meeting after the next. Conceivably this could drag on and on. I for one have heard almost every aspect of argument, one way and the other, and I can see no benefit from further representations, even though I know they would like to present their position.

What is the feeling of the committee on that?

The CHAIRMAN: The steering committee did have a meeting, Mr. Otto, and it was suggested that people who wished to present their briefs should be allowed to do so. However, if it is your wish, I will take up your suggestion with them and see if I can compress this matter. I know some of these organizations have given a great deal of time and effort to preparing briefs which they would like to submit. The committee themselves have asked the deputy minister of agriculture to appear for questioning in relation to some aspects of this topic, and I think every member of the committee would wish to hear him.

There are certain physical problems involved, and most of our meetings last only two hours. However, I will take up the matter with the steering committee.

Mr. OTTO: In the alternative, could we possibly have two meetings a week in order to clear up the matter before the end of the session?

Mr. GELBER: I think we should ask these people to submit their briefs and then if they want to come here we will not spend time while they are reading their briefs.

Mr. KLEIN: I would like to hear these people, particularly the processors, because if we were to hear them we could at least have a salutary effect on them.

The CHAIRMAN: There are two of these witnesses who have been requested to come by the committee, and I do not think any alteration could be made in that respect.

As far as other meetings are concerned during the week, this presents rather a difficult problem. I know you are just giving your mind to this for the first time, Mr. Otto, but we have considered it before. We found that Mondays appeared to be very difficult. Tuesdays are difficult also because there are two other standing committees; Wednesday is a day generally reserved for caucuses, and Thursday is the same as Tuesday. We just seemed to be left with Friday. We have examined this very carefully in relation to the meetings of the other standing committees, and the steering committee found that the only time available was Friday morning at 9 o'clock, which gives us two hours prior to the house sitting and, if necessary, we have permission to sit during the house sessions. If we were to sit during the rest of the week we would probably have to choose a time which conflicts with the house sittings, and this is something most members of the committee and the steering committee feel is not desirable and should only occur when it is absolutely necessary, for instance, to protect the interests of a witness who comes from a long distance. However, I will take it up again with the steering committee.

Mr. OTTO: Perhaps with the permission of all concerned we could sit for a whole day and clear up this matter.

The CHAIRMAN: The steering committee will discuss this. We did sit one day for a full day and, if you remember, the experience was not a good one.

Mr. MUIR (*Lisgar*): I think we would be open to criticism if we did not hear these people, particularly if any changes were made in the act. I do not see the necessity of hurrying. I think it is something that has to be considered very carefully, and I think we should give the witnesses an opportunity to present their evidence.

The CHAIRMAN: Thank you very much, Mr. Muir. This, of course, has been decided by the steering committee and by the committee, and I think in the circumstances it is the best we are able to do.

Mr. WHELAN: The primary processors, the group who were to be here to give evidence this morning, decided to consolidate their evidence.

The CHAIRMAN: If the problem can be approached in the way in which Mr. Whelan's witnesses are approaching it, then the situation will be helped.

Mr. AIKEN: Can we perhaps carry that further and have more than one brief and more than one group at each meeting so there will be some confrontation? That might cut down our time. I agree that we should hear them, but perhaps we could have two or three briefs at one meeting, and perhaps prevent repetition.

The CHAIRMAN: I will put that forward at the steering committee, Mr. Aiken. However, this is our program at the present time; should any change arise you will be advised.

I thank you, gentlemen, and we will now adjourn until Friday, November 8.

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(HOUSE OF COMMONS
First session—Twenty-sixth Parliament)
1963

STANDING COMMITTEE

ON

ANADA, **BANKING AND COMMERCE**

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

(FRIDAY, NOVEMBER 8, 1963)

Respecting

(Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing))

WITNESSES:

(Mr. Lloyd W. Houlden, Q.C., Counsel; Mr. T. J. Houghton, Manager,
National Adjustment Bureau Services, The Canadian Credit Men's
Association Limited; Mr. J. L. Biddell, F.C.A., The Clarkson Com-
pany Limited.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.
Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Jewett (<i>Miss</i>),	Pilon,
Boulanger,	Kelly,	Ryan,
Cameron (<i>Nanaimo-</i>	Kindt,	Rynard,
<i>Cowichan-The Islands</i>),	Klein,	Sauvé,
Chaplin,	Lloyd,	Scott,
Chrétien,	Macaluso,	Skoreyko,
Côté (<i>Chicoutimi</i>),	McLean (<i>Charlotte</i>),	Tardif,
Douglas,	Monteith,	Thomas,
Flemming (<i>Victoria-</i>	More,	Thompson,
<i>Carleton</i>),	Morison,	Vincent,
Gelber,	Muir (<i>Lisgar</i>),	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTIONS

Proceedings No. 4—Friday, November 1, 1963.

In the Minutes of Proceedings and Evidence—

Page 136, Line 25:

For “assured” read “assumed”.

Page 136, Line 33:

For “producers” read “processors”.

MINUTES OF PROCEEDINGS

FRIDAY, November 1, 1963.

(13)

The Standing Committee on Banking and Commerce met at 9:15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Miss Jewett and Messrs. Addison, Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Douglas, Gelber, Habel, Klein, Lloyd, Macaluso, McLean (*Charlotte*), Moreau, Morison, Muir (*Lisgar*), Nugent, Olson, Pascoe, Sauvé, Whelan.—(23).

In attendance: From the *Canadian Credit Men's Association Limited*: Mr. Lloyd W. Houlden, Q.C., Counsel; Mr. T. J. Houghton, Manager, National Adjustment Bureau Services; From *The Clarkson Company Limited*: Mr. J. L. Biddell, F.C.A.

Mr. Muir (*Lisgar*) requested that certain corrections be made in the Minutes of Proceedings and Evidence of November 1, 1963 (*Issue No. 4*). The Committee agreed to the corrections.

The Committee resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced Mr. Houlden and Mr. Houghton. He also introduced Mr. Biddell who had prepared a brief and asked leave to present it to the Committee. It was agreed that Mr. Biddell should present his brief after the representatives of The Canadian Credit Men's Association Limited had presented their brief and had been questioned. (*Secretarial note:* In the event time did not permit Mr. Biddell to present more than a summary of his brief and therefore, by leave of the Committee, the full text of the brief is attached as *Appendix "A"* to these Proceedings).

Mr. Houlden then presented the brief of The Canadian Credit Men's Association Limited, and was questioned, assisted by Mr. Houghton and Mr. Biddell.

The Chairman thanked the witnesses for appearing before the Committee and for the presentation of their brief.

At 11:00 a.m., the Committee adjourned to Friday, November 15th.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 8, 1963.

The CHAIRMAN: Gentlemen I see a quorum and will call this meeting to order.

We will be resuming our consideration of Bill C-5, an act to amend the Bankruptcy Act.

This morning we have scheduled the presentation of the Canadian Credit Men's Association. We have as a witness Mr. L. W. Houlden, Q.C. We also have with us Mr. P. J. Houghton, manager of the National Adjustment Bureau Services. I am also informed that Mr. J. L. Biddell, F.C.A., of the The Clarkson Company Limited has a brief which he would like to present to us and then submit himself for questioning by the members of this committee. I note that his is a fairly lengthy brief. I should think if we have time after hearing the first brief we might consider accepting this brief if possible between now and 11 o'clock. Is this agreeable to everyone?

Some hon. MEMBERS: Agreed.

Mr. WHELAN: Mr. Chairman, will this procedure limit our questions in respect of the Canadian Credit Men's Association?

The CHAIRMAN: It is not the intention of the Chair to limit this committee in any way, Mr. Whelan.

More seriously, I should like to state that the method we should perhaps follow is to ask questions in respect of the first brief and then, if time permits, receive the second brief and then ask questions in that regard.

Mr. NUGENT: Mr. Chairman, before we proceed any further I wonder whether in view of the implications of the MacKay Report—

Mr. HABEL: What has this to do with this meeting?

Mr. NUGENT: Appearances are more important than facts at some times and while I am not suggesting that myself or that any of my colleagues would not want to co-operate with this committee fully under any circumstances, I wonder whether the Chairman might like to consider his position at this time, and whether he would consider the situation in view of the type of business this committee does?

Mr. HABEL: Where is the bill of rights?

The CHAIRMAN: Gentlemen, without going into the point raised by Mr. Nugent's question, I may state that I do not feel that I should go into this question further. If your question raises a point of order I will ask the Vice Chairman to take over during the time it is discussed, but I have no feeling of having done anything wrong, improper or illegal at any time in connection with the matter to which you have referred. Consequently I do not feel that there is any question in regard to withdrawing or resigning on my part.

It may be in order since the matter has been raised to state that my statement in the House of Commons yesterday was merely the relating of things which were related to me and should not be taken by any member of this committee as suggesting or insinuating anything about them.

Mr. OLSON: Mr. Chairman, I do not know that I am completely familiar with all of those things which have been raised here, but it seems to me that the same thing should apply in this committee as in the House of Commons.

If anyone has a complaint to make rather than making innuendoes and insinuations, he should either present information on the charge or remain silent.

There is one other thing which does disturb me, Mr. Chairman, and that is the statement made in the House of Commons yesterday to the effect that you had been intimidated; either you do certain things or the functions of this committee are going to be harassed. I am not very happy about that suggestion.

The CHAIRMAN: In relation to this matter, that is what I referred to a moment ago.

I should like to say to all members of this committee in regard to the statement I made in the House of Commons yesterday that I was simply relating a statement or message which was given to me in the way it was given to me. This does not imply or insinuate anything in respect of any member of the House of Commons. Obviously this message came to me through a messenger who is not part of the House of Commons, from someone who is not part of the House of Commons.

I do not think I need go further in this matter.

Mr. SAUVE: (French).

The CHAIRMAN: (French).

Mr. SAUVE: (French).

The CHAIRMAN: (French).

(Text of statement and replies in French not recorded.)

The CHAIRMAN: There was no question raised in that regard. I have stated that if someone is raising a point of order in respect of this situation upon which the chair should make a ruling, in view of the fact that it may involve me personally I would gladly relinquish the chair to the Vice Chairman while the point was being debated.

Mr. MACALUSO: Mr. Chairman, I have the impression that the hon. member merely made a suggestion and that there was no point of order raised. We have not heard any motion so let us proceed with the normal business of this committee.

The CHAIRMAN: I think this matter has gone far enough, gentlemen.

At this time I should like to introduce Mr. L. W. Houlden, Q.C. and Mr. P. J. Houghton manager of the National Adjustment Bureau Services. I think Mr. Biddell if I understand correctly, is also going to sit at the table with the other two gentlemen, and if time permits we will hear his brief and question him after having exhausted our questions in respect of the first brief.

Gentlemen, Mr. Muir must leave early this morning and wishes at this stage to make one or two corrections in the Minutes of Proceedings and Evidence.

Mr. MUIR (*Lisgar*): Thank you, Mr. Chairman. At line 25 at page 136 there appears the word "assured". This should read "assumed". At line 33 on the same page I am reported as having stated; "Other witnesses have given evidence that some producers use the primary produce—", I meant to say "processors". I should like to have those two corrections made, Mr. Chairman.

Mr. P. J. HOUGHTON (*Manager National Adjustment Bureau Services, Canadian Credit Men's Association Limited*): Mr. Biddell has sufficient copies of the brief if you care to have them distributed.

The CHAIRMAN: Perhaps by so doing we will settle this problem.

With your permission, gentlemen, I will have Mr. Biddell's brief distributed.

Mr. Houlden will read his brief and then we will address questions to him. You do not need to stand, Mr. Houlden, unless you feel you must.

Mr. LLOYD W. HOULDEN (*Q.C., Counsel for the Canadian Credit Men's Association Limited*): Mr. Chairman and gentlemen.

The Canadian Credit Men's Association Limited (herein called C.C.M.A.) is a non-profit organization of some 4,000 members. These members are engaged in manufacturing, wholesaling and distributing of products throughout the Dominion of Canada. The C.C.M.A.—I will use that abbreviation hereafter—furnishes credit information to its members, arranges for the holding of meetings for the exchange of credit information, and generally represents the interests of its members in matters which affect credit granting.

Over the years, C.C.M.A. has given close attention to the provisions of the Bankruptcy Act. From time to time, C.C.M.A. has made representations to the government in respect of amendments which it has felt would strengthen the act and permit the act to carry out the purposes for which it was designed. A recent example of this is a brief submitted by C.C.M.A. on March 27, 1962, to the Minister of Justice, dealing with suggested amendments to Part VIII of The Bankruptcy Act. Those are the criminal prosecutions sections.

C.C.M.A. has given careful consideration to Bill C-5 and has canvassed its members requesting their opinion on the bill. As a result of the submissions which have been received, C.C.M.A. feels for the reasons set forth in this brief, that Bill C-5 is not good legislation and should not be enacted.

Mr. LLOYD: Mr. Chairman, I am sorry to interrupt, but was it the intention of the committee that we should all have copies of this brief while it is being read?

The CHAIRMAN: I believe copies have been sent to all members, however, there are further copies here which the messenger can distribute. If you wish to dispense with the reading of this brief that is another matter. I think it would be as well to have the brief read at this stage.

Mr. HOULDEN: C.C.M.A. wishes to make it clear to the standing committee on banking and commerce that it has no connection with any of the chartered banks of Canada, nor does it in any way speak for or represent the interests of such banks. Further, C.C.M.A. is not concerned with suggested changes in Section 88 of the Bank Act. This is a matter which can be considered, if, as, and when amendments are proposed for that Section. C.C.M.A. is only concerned in this brief with The Bankruptcy Act and the suggested amendment to it.

The following are the objections C.C.M.A. would like to submit in respect of Bill C-5.

(1) Preferential effect of the proposed bill

One of the prime purposes of bankruptcy legislation is to provide a method whereby the property of the debtor can be realized in an orderly manner and distributed to creditors on an equal or *pari passu* basis (Section 100 of The Bankruptcy Act). There are certain exceptions to a *pari passu* distribution provided for in Section 95 of The Bankruptcy Act. The principal ones are claims of wage earners and landlords. The reasons for these exceptions are obvious and need not be stated.

The other exceptions in Section 95 are government claims. The association feels that consideration could well be given to the cutting down of the extent of these preferences, if not, their complete abolition.

If Bill C-5 is enacted, claims of producers of products will be given a preference over other creditors. The members of C.C.M.A. who are also supplying to wholesale purchasers, shippers and dealers, will, under this legislation, rank after the claims of producers and the bank have been satisfied. For example, if a lumber dealer goes into bankruptcy, the supplier of lumber will be paid out of the assets left after payment of costs of administration and wage earners, but the supplier of stationery for the office will not be paid until after payment of costs of administration, wage earners, suppliers of lumber and the bank.

Again, if we consider a fruit producing plant which goes into bankruptcy with an inventory consisting of canned fruit, is it right that the unpaid fruit grower should be given a preference over a creditor who supplies the sugar or spices for the syrup, or the manufacturer who supplies the cans, the machinery company which installed the equipment or the corner service station operator who services the trucks? C.C.M.A. believes that it is improper that one class of creditors should be given a preference over other classes.

(2) Unfairness of the proposed bill

This is unfair because the largest portion of the materials used to produce the final product may have been supplied by those who are not primary producers, but due to the fact that the manufacturer has used a primary producer's product at some stage in the process, the product must be sold and used for payment of the claims of primary producers in priority to the claims of other suppliers.

From enquiries made, C.C.M.A. has ascertained that in the cost of canned products, the cost of the primary product would not exceed 25 per cent, yet, under the proposed legislation, the producer of the primary product would be paid in priority to those who have supplied 75 per cent of the materials used.

(3) Bill C-5 implies that primary producers are not good businessmen

Bill C-5 implies that farmers, fishermen, lumber suppliers, etc., are not as good businessmen as other granters of credit. This Bill is designed to give special protection to one group of creditors. In his evidence before the Standing Committee, Mr. Whelan, M.P., stated at page 19 that one of the reasons for introducing the bill was because there now are large one-crop farms, and other farms of one product primary production, on a scale undreamed of by our 1861 predecessors in government. The C.C.M.A. believes that persons in charge of such operations are as qualified as any of the members of C.C.M.A. to see that their interests are protected creditwise.

(4) Effect on secondary industries

It is common ground that bankruptcy places undue hardship on all affected by the insolvency. It is no group in a community that is affected but rather the community as a whole. If the loss were suffered by only one group, it would place such a heavy burden on that particular group, that it might be forced out of business and into financial ruin itself.

If we say we will sacrifice all other creditors for the sake of retaining prosperous primary producers, regardless of the results, then, this will have a serious effect on secondary suppliers. The secondary manufacturer would be placed in a precarious position, in that whenever he supplied goods that might be incorporated in an end product in connection with primary goods, he must run the risk of receiving no return whatsoever in a bankruptcy. This would be extremely bad at this time when we are trying, as a nation, to encourage the growth of secondary industries.

(5) Effect on the economy generally

If this bill is enacted, the members of C.C.M.A. will be reluctant to grant credit to industries falling within the scope of the legislation. The wholesale purchaser, shipper, or dealer, will find it a difficult matter to obtain credit terms.

As has been pointed out by the members of the Canadian Bankers Association (see page 11 of the Minutes of Proceedings & Evidence dated July 26th, 1963), the small producers, wholesalers, etc., would find it hard, as a result of this legislation, to carry on or to increase their production. The larger and better financed institutions would not be hurt but the small producers would be seriously affected.

(6) Difficulties in carrying out the legislation

Bill C-5 will be difficult legislation to implement. In effect, it does away with Section 95 of The Bankruptcy Act and substitutes a new scheme of priorities. It is the submission of C.C.M.A. that the bill raises many problems. Some of these are the following:

Does the Section mean that out of the monies realized, all costs of administration of the bankruptcy are first to be paid? If, for example, a large estate were involved, would all legal and trustee's costs be charged against the realization? Or is it the intention that only the costs of administering the fund should be charged as costs of administration?

As regards the claims of wage earners, is it the intention of the Bill that a clerk in the office would not be given a preference but a machine operator would receive the protection of the Section?

The Bankruptcy Act in addition to assignments and Receiving orders provides for the making of proposals. Does Bill C-5 have any application where a debtor makes a proposal? If not, the act can be easily circumvented in this fashion.

The section provides that claims of producers must be proven to the Court. How is this to be done? Will the trustee have to apply to the Court for a reference to determine those entitled to share?

Who is the producer of the product? Is a large lumber dealer who supplies lumber to a retailer, a producer of the product? Wholesale purchaser, shipper of, or dealer in products of agriculture, etcetera, include a very wide range of industries and are not restricted to canneries, grain elevators and operations of that nature.

Subsection 3 of Section 51(a) provides that the claim is to be filed within 30 days with the court. It is not the practice to file claims in bankruptcy with the bankruptcy court, nor does the court have the facilities to handle the filing of such claims. It would seem that the claims should be filed with the trustee and reported in some manner to the court. Further, if a creditor does not file his claim within 30 days, what will be the result?

It is the submission of C.C.M.A. that the proposed Section 51(a) raises a great number of difficulties and is not well drafted legislation. The C.C.M.A. believes that the enactment of the legislation in its present form, would result in extensive litigation.

Mr. MOREAU: Mr. Houlden, I have a few questions I should like to ask in respect of this brief.

You have raised some doubt as to who actually is a primary producer. You state at the bottom of page 2 as follows:

For example, if a lumber dealer goes into bankruptcy, the supplier of lumber will be paid out of the assets left after payment of costs of administration and wage earners,—

So far during the meetings of this committee we have been talking about a producer as being someone who produces at the primary level. A lumber wholesaler I would not think would be qualified as a primary producer and certainly not within the terminology we have used. I wonder where your difficulties in regard to this definition of a primary producer occur. What are the difficulties you have in defining a primary producer?

Mr. HOULDEN: The difficulty as I see it, Mr. Moreau, results from the very wide wording of the section as it appears in this bill. The courts must interpret this legislation when it comes before them and the wording used in the proposed section is as follows: "Wholesale purchaser or shipper—" of any such products.

Is a lumber dealer not a dealer of the products of the forest? Is a court not going to find that a lumber dealer comes within that definition and therefore the act applies?

In the manner in which the statute is proposed, a wide range of things will be covered including the products of agriculture, the products of the forest, including lumber dealers, and the products of a quarry—I presume that covers stone, sand and gravel—products of a mine, the products of the sea, lakes and rivers. This will cover all the primary industries and perhaps will go even farther with this suggested wording.

Mr. MOREAU: You raise some objection to the position given by this proposed legislation to the creditor who supplies sugar and spices, for example, because he is somewhat further down the line than the primary producer would be under this proposed legislation. Is it not a fact that he presently is considered down the line after a number of other preferred creditors, namely the federal government, the banks and wage earners? This is not really a new precedent or new ground that we are breaking at all; is that correct?

Mr. HOULDEN: This is tremendously new ground, Mr. Moreau. Just think of the effect of this legislation. If you suggested to me today that you wanted Section 95 to apply to the person who is supplying the primary producer this would involve a different question. What you are saying in this legislation is that we will take these people and put them ahead of secured creditors. Secured creditors have advanced their money and obtained proper security. We cannot say to them that these people are going to be paid first and secured creditors will have to wait in line. Also then you are going to apply section 95 after that. You are going to pay the primary producer, the cost of administration, as well as the wage earners before the secured creditors, and after those are paid. The claims under section 95 which includes ordinary wage earners, landlords and government claims.

Mr. MOREAU: I am sure you have read the evidence given at earlier meetings of this committee, which indicates that the primary producer is very much in the position of a wage earner in that he perhaps is a one crop farmer having a very high incidence of labor contained in the product that he delivers and essentially is not very far removed from the wage earner in these considerations. I am just wondering what your difficulty is in this regard.

Mr. HOULDEN: I shall give you two answers to your question. First of all there are not very many bankruptcies of this type. They are not too common. In large bankruptcies you will often find that some of our members have been supplying service only to one industry exclusively and when that industry goes into bankruptcy those suppliers may go into bankruptcy themselves. When a large company goes bankrupt it is much like throwing a stone into a pond, you get a great many spreading ripples. Frequently as a result of one large bankruptcy you will find a number of other industries going into bankruptcy.

I feel sorry for these primary producers. These individuals often lose their whole year's crop. However, as I say, in any large bankruptcy many of our members are hurt just as badly. Perhaps the man who serviced the bankrupt company's trucks did no other business than that, so that in the event of a bankruptcy his source of income is also lost.

Mr. MOREAU: I would expect that such a supplier would have more than one customer; however, I appreciate the point you have made.

I am interested in the statistics which you have quoted indicating that the cost of the primary product would not exceed 25 per cent. It seems to me that this could be quite a variable factor and I am wondering how you arrived at such a figure.

Mr. HOULDEN: We asked several large canning companies what this figure was. Actually the figure given to us was less than 25 per cent, but we felt that

we should take a higher figure. We were informed that the cost was somewhere in the neighbourhood of 22 per cent or 23 per cent, but we felt that it would be better to consider the cost of the primary product as being under 25 per cent.

Mr. MOREAU: Would this figure not vary a great deal as between tomatoes and apple juice, for instance, and strawberries?

Mr. HOULDEN: I do not know the answer to that question; I am sorry. We did contact several canning companies and these are the figures which we were given.

Mr. WHELAN: Mr. Chairman, at the outset I should like to state that I am not very familiar with the Canadian Credit Men's Association and if my questions appear to be rather naive, I hope that with the knowledge that I am a farmer and not a lawyer you will forgive me. Perhaps Mr. Houlden would indicate something of the composition of the Canadian Credit Men's Association?

Mr. HOULDEN: I have outlined that composition in the opening part of the brief, Mr. Whelan. We have approximately 4,000 members who are in what you might call the secondary industry business. These members are manufacturers, wholesalers and distributors of products.

Mr. WHELAN: Is your association affiliated with any other associations such as trusteeships in bankruptcy?

Mr. HOULDEN: The Canadian Credit Men's Association were at one time trustees in bankruptcy and still hold a licence, but they are going out of that field.

Mr. BOULANGER: Did you say that you are going out of that field?

Mr. HOULDEN: Yes.

Mr. BOULANGER: At this time you are still operating in that field, is that correct?

Mr. HOULDEN: That is quite right.

The CHAIRMAN: I was under the impression that Mr. Boulanger was raising a point of order, but it seems that he was not. I think we should proceed.

Mr. WHELAN: I have done some research on this in Might's and I find there is some confusion, at least so far as a layman is concerned. In 1963 it shows under the Canadian Credit Men's Association general manager E. T. Burke; then Canadian Credit Institute, registrar E. T. Burke; then under Canadian Credit Men's Trust Association and Canadian Credit Men's Association and again under trust associations the Canadian Credit Institute. These are all under the same street address, under the same telephone number, 6 Crescent Road—the Canadian Credit Men's Association and the Canadian Credit Institute. This appears to be really confusing to me. I have said that I am not a lawyer. I do not know what is the work of these different organizations, but they all have the same telephone number—trustees under bankruptcy, Canadian Credit Men's Trust Association and Canadian Credit Men's Association Limited. They all have the same telephone number.

Mr. P. J. HOUGHTON (*Manager, National Adjustment Bureau Service, Canadian Credit Men's Association Ltd.*): May I answer? I am with the Canadian Credit Men's Association. The Canadian Credit Men's Association was incorporated in 1910 under dominion charter as Canadian Credit Men's Trust Association Limited. By supplementary letters patent last year, we dropped the "Trust" from our name. The Canadian Credit Institute is the educational arm of our association. We conduct a course of study in credits and collections through the extension department of the University of Toronto, and currently this year have about 700 students in all parts of Canada taking this three year

course in credit management. The prime function of the association is credit reporting at the commercial level.

Mr. BOULANGER: I am having a difficult time and I am doing my best with the English. I do not accuse you of not speaking plainly, but you are speaking as fast in English as we sometimes do in French.

The CHAIRMAN: Mr. Boulanger, I may be misinformed, but I believe there is a translator in the translation box.

An hon. MEMBER: There is no one in the booth.

The CHAIRMAN: Then, under the circumstances, Mr. Houghton, I think if you would give your comments a little more slowly I am sure Mr. Boulanger will have no difficulty.

Mr. HOUGHTON: I offer my apologies if I was speaking too fast.

Mr. BOULANGER: I did not intend to be sarcastic, but I have been having some difficulty.

Mr. HOUGHTON: We are a non-profit organization, we are owned and controlled by some 4,000 wholesalers, manufacturers and distributors. We have offices from Moncton to Victoria. Each member of ours is a shareholder, and we are governed by a national board of directors, and locally by boards of governors composed of credit managers or general credit managers of firms.

Mr. BOULANGER: Mr. Chairman—

Mr. WHELAN: May I continue?

The CHAIRMAN: Mr. Boulanger, for your information the translator was here and as no one was using the system he left. However, we have sent for him again and as soon as he arrives I will inform you.

Mr. WHELAN: Does this cover all these other organizations which have the same telephone number?

Mr. HOUGHTON: There are only two. The Canadian Credit Men's Association Limited has its head office at 6 Crescent Road, and the Toronto branch office is at 12 Berryman Street. We have one switchboard at Berryman Street, and our head office is connected. The offices are about a mile apart.

Mr. WHELAN: Then these other things shown under Might's do not mean anything.

Mr. HOUGHTON: There are only two, and I am associated with them.

Mr. WHELAN: The Credit Men's Trust Association, Credit Men's Association Limited and the Canadian Credit Institute all are listed under 12 Berryman Street, and have the same telephone number as has 6 Crescent Road.

Mr. HOUGHTON: By supplementary letters patent last year the Trust was dropped from our name and we are known as The Canadian Credit Men's Association Limited. There is just one organization.

Mr. WHELAN: In respect of paragraph one on page 2 in my own opinion I think this paragraph misrepresents the purpose of the company. The Canadian Credit Men's Association is a profit organization being incorporated under Part I of the Companies Act as a share capital company limited as to liability.

Mr. AIKEN: On a point of order, we are not investigating, surely, the Canadian Credit Men's Trust Association. These gentlemen are here to present a brief. I do not know why we have to suspect them of anything.

Mr. WHELAN: This is part of their brief. They say they are a non-profit organization.

The CHAIRMAN: I am not sure whether this has a great deal to do with Bill No. C-5. The Credit Men's Association Limited have presented a brief in respect of bill No. C-5, and I would think it might be wise if we relate our

questions to that general field. We have had discussion this morning which has ranged over different subjects. I wish we could relate our questions to the general subject of bankruptcy and Bill No. C-5.

Mr. WHELAN: You mean that any organization may come here, present a brief pointing out the good aspects of the organization, and that no member of the committee can question what they say about their organization?

The CHAIRMAN: I do not mean that. I believe, however, that the point Mr. Aiken brought up has some foundation in that we are not here as an investigating committee to investigate the Canadian Credit Men's Association Limited.

Mr. MOREAU: The credibility of witnesses.

The CHAIRMAN: Possibly if you ask Mr. Houlden to explain this, as a lawyer he may have a good explanation.

Mr. BOULANGER: On a point of order, I do not agree with Mr. Aiken or even completely with you, Mr. Chairman. (*Statement in French not recorded.*)

The CHAIRMAN: Would the committee like me to translate generally what Mr. Boulanger has said?

Some hon. MEMBERS: Yes.

The CHAIRMAN: He opened his remarks by stating that he disagreed with the point raised by Mr. Aiken, and also with some remarks made by the Chair on the point raised by Mr. Aiken. He stated in a general way that when the Credit Men's Association Limited in the brief say they are non-lucrative and represent 4,000 members, and when they made certain other assertions, these are matters which could be questioned and he, Mr. Boulanger, wished to ask questions on this subject.

Mr. AIKEN: Mr. Chairman, I have no objection to questions directed toward who the Canadian Credit Men's Association represents; but I gathered that Mr. Whelan was directing his remarks a little further towards the reliability of this association. I do not think this is proper at all. The Canadian Credit Men's Association Limited is well known and has been in the credit field for 50 years.

Mr. LLOYD: On a point of order; I think Mr. Whelan was quite gracious at the beginning when he mentioned he is a farmer, not a lawyer, and not knowledgeable in the matters of law. I am quite sure that what he is asking can be answered easily. He might ask: What do you mean by the term non-profit organization; I do not understand this.

The CHAIRMAN: I was going to suggest we continue with the questioning. I would suggest, however, that we relate the questions as much as possible to the subject which is before us. Would the witness explain the term non-profit organization?

Mr. HOUGHTON: We are not considered taxable by the tax office and declare no dividends and pay no directors' fees. Any profit we make is returned to our members in increased service.

Mr. WHELAN: Your company is a collection agency for the members?

Mr. HOUGHTON: That is right; it is a part of our function.

Mr. WHELAN: In respect of paragraph 2 on page 2 of your brief I say that it is not one of the objects set out in the company's letters patent to strengthen the Bankruptcy Act and permit the act to carry out the purposes for which it was designed. Generally the purposes of the act are, first, to provide for an orderly and equitable distribution of the assets among the creditors with certain exceptions, secondly, to protect and re-establish an honest debtor and, thirdly, to punish and prevent fraud. The objects of the

company are to collect the debts owing to its creditor members to the prejudice of other creditors who are not members of the company. Is that right?

Mr. HOULDEN: No.

Mr. WHELAN: Do the members of your organization not enjoy a preference?

Mr. HOUGHTON: No, not at all. I might say that of our 4,000 members, not all of them by any means use the facilities of our collection department. That is just a very minor function of our association. Our main business is that of credit reporting to our members, and amongst our members only. It is the interchange of credit information between members of our own association only.

Mr. WHELAN: Then would you not say that Bill C-5 is good legislation when measured against the objects of the company? No primary producers are members of the company, and the result of the bill would be to frustrate the company in its stated object to get as much for its members as it can. Is that not right?

The CHAIRMAN: Would you restate your question. I do not think the witness has understood it.

Mr. WHELAN: I will admit that Bill C-5 is not good legislation when measured up against the objects of the company, because no primary producers are members of the company, and the result of the bill would be to frustrate the company in its stated object to get as much for its members as it can.

Mr. HOUGHTON: That is agreed.

Mr. WHELAN: The company, therefore, is interested in including as many assets of non-members in the Bankruptcy Act as will pay its members 100 cents on the dollar?

Mr. HOULDEN: If that were true, the primary producers will share with us. Our feeling is that we should all stand together. That should be the purpose of bankruptcy legislation, and not to take one group and set it ahead of everybody else.

The CHAIRMAN: (French—not recorded).

Is the translator here yet?

An hon. MEMBER: No.

Mr. WHELAN: In respect of paragraph 4 on page 2, it is my opinion it is appreciated that the company is not connected with the chartered banks and that it is not concerned at this time with section 88 of the Bank Act. Is it not true that the section is as much against the interest of the company as is Bill C-5?

Mr. HOULDEN: Section 88?

Mr. WHELAN: Yes.

Mr. HOULDEN: I am not here to discuss section 88 today. Whether or not it is wise legislation is not a matter before this committee. I am here to discuss this proposed amendment. If section 88 comes up before this committee, we will consider it.

Mr. WHELAN: The company says that under the Bankruptcy Act there are certain exceptions to an equal distribution of assets, and that the principal ones are for wage earners and landlords. I say this is not an accurate analysis. Section 95 first excepts secured creditors. This exception includes a bank's security under section 88 of the Bank Act, and registered conditional sales and liens, among other secured assets. The company omits to mention that when it acts as a licensed trustee, its fees and remuneration rank second among the unsecured creditors.

Mr. HOULDEN: Yes.

Mr. WHELAN: So, you have preference over the primary producer.

Mr. HOULDEN: We have gone out of the bankruptcy field in every province except one. We are not doing bankruptcies, and will close up as soon as possible. We have some open accounts, and we will close them up and leave the field. Besides, we have explained that we are non-profit. Any lawyer here will know that the Canadian Credit Men's Association have always charged for bankruptcy work at a minimum fee.

Mr. WHELAN: A trustee can refuse to act if he believes there are not enough assets to pay him?

Mr. HOULDEN: Absolutely.

Mr. WHELAN: Then he is not in the position of a primary producer; he does not work unless he knows he is going to get paid.

Mr. HOULDEN: You must remember the stage at which he comes in. If a producer knew that the cannery was not going to pay him, you would not see him go ahead and supply the cannery. It is the same with the trustee.

Mr. WHELAN: Under section 17, the remuneration of the trustee can be voted by the creditors in such amount as they see fit.

Mr. HOULDEN: It is almost never done, I assure you, from experience.

Mr. WHELAN: He can get up to $7\frac{1}{2}$ per cent of the assets.

Mr. HOULDEN: Yes.

Mr. WHELAN: Before the primary producer gets anything.

Mr. HOULDEN: Let me say this: when the canning company goes into bankruptcy somebody has to take over, and somebody has to do the work of cleaning up the mess and making the distribution. In this bill it is provided that the cost of administration shall come first.

Mr. WHELAN: This, actually, is copied out of one of the other bills. I am surprised at your earlier statement that you could not define primary producer, because this is copied from another act.

Mr. HOULDEN: It comes from section 88, and that is causing a great deal of difficulty at the present time.

Mr. WHELAN: Has your organization ever made any representation against this section 88?

Mr. HOULDEN: No. When and if it comes up we will consider it and will be here.

Mr. WHELAN: You like it the way it is?

Mr. HOULDEN: No. I did not say that.

Mr. WHELAN: The company believes that all other preferences, which include welfare payments to the government, should be cut down or abolished. Is that right?

Mr. HOULDEN: We feel this way: you say to a wage earner, "You are restricted to three months prior to bankruptcy." You say the same thing to the landlord. If, for instance, the Department of National Revenue has not bothered to collect its tax for several years, in the case of a bankruptcy it can come forward and take all the assets for itself. Why should it not be restricted in the same way you restrict the wage earner and the landlord, if not abolish its preference altogether. We do not see why there should be any priority for government claims. That is our feeling.

Mr. WHELAN: This suggestion confirms the statement made, that the company's object is to promote the financial interest of its unsecured creditor members by making as many assets as possible available to them.

Mr. HOULDEN: All of the unsecured creditors, not just our own members. We want them all to share equally.

Mr. WHELAN: I would like you to correct me if I am wrong. It is not accurate to say that Bill C-5 gives the primary producer a preference over other creditors. It gives him a preference over some other creditors; but there are presently all manner of creditors who have secured or preferred claims. The company's brief has mentioned some of them. At the same time in your brief you say that the primary producer has preference over all the creditors.

Mr. HOULDEN: Under this proposed bill.

Mr. WHELAN: No. The bill does not give preference over all other creditors.

Mr. HOULDEN: It does; that is the whole purpose of this bill. The bill says that, when one of these canning companies goes bankrupt, its assets then become a trust and that trust must be realized upon. When those assets are realized, first there is paid the costs of administration, then the wage earner, and then the primary producer.

Mr. WHELAN: We come in before the banks.

Mr. HOULDEN: Ahead of everybody.

Mr. WHELAN: The management and the wage earner come in and then we come in. That is my understanding.

Mr. HOULDEN: That is not the way it is worded.

Mr. WHELAN: The examples of the way the effect of Bill C-5 operates, as given by the company, are irrelevant. A creditor who supplies sugar or spices for the syrup, or a manufacturer who supplies the cans, is not supplying his whole year's work and investment to the processor. In respect of the machinery company which supplies the equipment, that company undoubtedly is protected by a registered chattel mortgage; and the service station operator who services the trucks has a lien for work and services which he can attach to the trucks at any time he suspects the credit of the processor.

Mr. HOULDEN: First of all, I think you assume too much when you say the machinery company will have a conditional sales agreement. It does not always have it.

Mr. WHELAN: You are saying he is not a good business manager; because he has that right.

Mr. HOULDEN: I have a case where a machinery dealer is caught for \$75,000 in a bankruptcy completely unsecured.

Secondly, in respect of the garage proprietor, any lawyer will tell you he only has his lien if he has the actual truck in his possession. If he has done the repair work and it has gone out of his garage, then he has lost his lien; he does not have possession.

Mr. WHELAN: He can go and get it.

Mr. HOULDEN: No, he cannot.

Mr. WHELAN: In respect of your objection number two, this is another example of misstatement by the company. The company says that the product must be sold in priority to the claims of other suppliers. As pointed out, many of these suppliers are secured creditors, or have been paid back by moneys secured from the bank in return for a blanket mortgage. Again, the company says in the case of canned products, the cost of the primary product would not exceed 25 per cent. The company says the primary producer gets paid under Bill C-5 in priority to the other suppliers who have contributed 75 per cent. This 75 per cent, of course, includes the workmen's contribution which is protected, overhead to the landlord which is protected, financing charges due the bank which are protected, and other secured contributions.

Mr. HOULDEN: That is not in this bill.

Mr. WHELAN: But they have this protection even if it is not in this bill.

Mr. HOULDEN: The bill takes it away; that is the whole purpose of this legislation.

Mr. NUGENT: May I interject? I have heard Mr. Whelan and others speak about primary producers here many times. This bill does not deal with primary producers; they are not in there at all.

Mr. HOULDEN: That is perfectly right. The language of this bill is so wide it could cover any range of industry.

Mr. WHELAN: The definition of primary producer is already in the statute. This is the definition we have copied.

Mr. HOULDEN: This comes from section 88, and that section is causing a great deal of difficulty in the range of industries covered.

Mr. WHELAN: I am only a layman and might not be as informed as my friend Mr. Nugent. However, I assume that a statute which has not been questioned is still good legislation and could be used, and that by so doing we would not get into too much trouble.

Mr. HOULDEN: I am sorry you used this definition, because it is very wide. I think this is causing a lot of trouble, and it has been questioned in court.

Mr. WHELAN: In respect of your objection number three, you say that Bill C-5 implies that primary producers are not good businessmen. This indeed is a soft impeachment so far as I am concerned. It is answered by Bill C-5. The company says, on page 2 of its brief:

From time to time, C.C.M.A. has made representations to the government in respect of amendments which it thought would strengthen the act and permit the act to carry out the purposes for which it was designed.

This is what we as primary producers are trying to do by Bill C-5. The C.C.M.A. may take pride in this confirmation by Bill C-5 of its belief that persons in charge of primary production are as qualified as any of the members of the C.C.M.A. to see that their interests are protected creditwise.

Mr. HOULDEN: No.

Mr. AIKEN: I think perhaps we should allow Mr. Whelan to read his complete brief.

Mr. LLOYD: I think we should give Mr. Whelan the opportunity of comprehending some of those things in respect of which he confesses a lack of knowledge. I agree that members should be allowed a great deal of latitude in their questioning, but we are now becoming involved in a form of questioning which is in defence of the bill.

Mr. WHELAN: Mr. Chairman, I can only say that I may be asking questions in defence of my bill but they are questions in conjunction and in connection with the brief which has been presented this morning. I am quite agreeable to presenting my statements at a later meeting and, if it is the desire of the committee, I shall defer my remarks at this time. I am only too willing to present my comments to the committee at a later date. However, I do feel that if individuals are going to present briefs, and I understand the gentleman from Clarkson Gordon is going to present one, members should be given the opportunity of making statements in regard to those briefs.

Mr. NUGENT: Mr. Whelan surely will be allowed to present a brief later on if he so desires. Let us deal with each brief in turn. I would like to have a crack at him on his brief later.

Mr. WHELAN: I wish you would tell that to the primary producers of Canada.

The CHAIRMAN: It is not the intention of the Chair to limit anyone in questioning as long as everyone remains within the bounds of propriety and order. If I understand you correctly, Mr. Whelan, you have a brief which you wish to present?

Mr. WHELAN: I do not know whether it should be referred to as a brief. I have considered the brief of the Canadian Credit Men's Association and have certain remarks and questions to ask in that regard.

The CHAIRMAN: If you intend to make statements and ask questions in regard to the brief presently before us you certainly are entitled to do so as that is the reason we are here this morning. While doing so may be time consuming, we are here to do a job. I would suggest that you make your remarks as short as possible so that we can complete our task within the time allotted. I would not go as far as Mr. Nugent, but perhaps Mr. Whelan will present his brief at some other time.

Mr. LLOYD: Mr. Chairman, very briefly all I am asking is that our questions should proceed along the lines of eliciting information and explanations. Our conclusions do not have to be drawn at this stage.

Mr. WHELAN: I will discontinue my questioning at this point, and if there is any time left after other members have finished I will then continue.

Mr. BOULANGER: Mr. Chairman, I should like to ask one question. Mr. Houlden you have stated in the French edition of your brief at page 2 the following:

La C.C.M.A. tient à préciser au Comité permanent de la Banque et du Commerce qu'elle n'est nullement liée à aucune des banques à charte du Canada et qu'elle n'entend d'aucune manière se faire le porte-parole ou le représentant des intérêts de telles banques.

You have stated quite clearly that you have no relationship with any chartered banks, but can you indicate how many directors of the boards of chartered banks are members of your association?

Mr. HOUGHTON: There are no bank directors serving on our board of directors, or our boards of governors.

Mr. BOULANGER: Are any bank managers or directors members of your association?

Mr. HOUGHTON: No, there are none.

Mr. McLEAN (*Charlotte*): I should like to know whether it is the opinion of these men from the Canadian Credit Men's Association that the primary producer should be on the same footing as all other creditors?

Mr. HOULDEN: That is right, Mr. McLean. That is our submission.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I should like to ask a follow up question. Mr. Houlden, do you really think that the producers of tomatoes or corn, or whatever it is, are in the same position as the suppliers of cans, labels, office machines and other things of this type? Do you not agree that the man who has perhaps 50 per cent or 75 per cent of his expected annual income involved in one product which is involved in a bankruptcy proceeding is in a much more serious position than a company which supplies cans, labels or office machines to perhaps 100 different customers?

Mr. HOULDEN: Yes, I agree with that statement.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you think in that event he should be given a preferred position?

Mr. HOULDEN: As I said before, Mr. Cameron, it is true of practically every bankruptcy that one or two people have geared their particular industry

to the company which has gone under. I am sorry when that happens and hate to see these other companies perhaps go under or have to struggle during that difficult period, but I think the cure that is suggested in this bill is worse than the disease. That is the point I am trying to put across. When you attempt to provide a cure in the way that Mr. Whelan has suggested through this bill, you are providing a cure that is worse than the original disease.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You are speaking of the number of creditors who have geared their products to the concern that has gone bankrupt?

Mr. HOULDEN: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you really think that is an accurate description of the position of a producer of agricultural products in an area where there may only be one possible purchaser of that product from a processing point of view? Are you not suggesting that they either go out of business and stop producing or gear their production to the one outlet?

Mr. HOULDEN: I am not suggesting that there is no solution to this problem which you have raised. However, if you consider a company town, if I may use that expression, where there is one large industry and that industry folds up, this hurts all the small suppliers in that area. I have every sympathy for the primary producers, and perhaps there should be some method of working out the problem. Perhaps the answer lies in bonding. Perhaps the answer lies in the supplying of government insurance. I do not know what the correct answer is, but we are sure that this bill will not provide a solution to the problem.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You do believe that the primary producer does have a prior right to protection?

Mr. HOULDEN: If you leave out the word "prior" I would agree with that statement. These people do need protection, but this bill does not solve the problem.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You still say that they are on precisely the same footing as the company which manufactures cans and labels, is that correct?

Mr. HOULDEN: No, I have not stated that and I am sorry if I have given that impression.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have rejected the use of the word "prior"?

Mr. HOULDEN: I suggest that we must find some solution to this problem. I agree with you when you state that when a farmer has to sell his product to a canner in his vicinity and that canner goes bankrupt that is a real hardship because the farmer's entire product for that year is lost. This is a terrible thing to happen, but I do not think the solution to this problem is found in this proposed bill.

Some years ago Mr. Biddell and I were involved in a large bankruptcy.

The CHAIRMAN: Excuse me, I wonder if you would permit me to interrupt at this stage. I am informed that the interpretation system will be in operation within a very few minutes. Anyone who cares to use the simultaneous translation system will be able to do so.

Mr. HOULDEN: I was going to give you an illustration. Some years ago, the Stanrock Uranium Mining Company in the Elliott Lake area went bankrupt. There were some \$29 million in bond holders unpaid and some \$6 million

in creditors. This involved a very hardship to the people of the Sudbury area who had been supplying a great deal of the material to the mine. I remember at that time small creditors who were hurt wanted to come here to Ottawa to get parliament to pass legislation to provide that out of the money that was being paid to the bondholders ten cents of every dollar would go to them and 90 cents to the bondholders. I remember Mr. Biddell saying at that time that the government of Canada could not do that sort of thing.

If people are going to buy our bonds and going to invest in Canada they have to know that their security is solid, and when you pass this type of bill as now proposed, and as Mr. Nugent has pointed out, it covers a great range of industries, you are doing something that should not be done. You must keep in mind that creditors only take security because of the worst that might happen. If the worst is not going to happen, they would not bother with their security. When you state to them that if something happens, their security is not going to be any good and that another group will be paid ahead of them, I say that you are doing our country a great harm. This is the idea I have attempted to point out in this brief.

Mr. KLEIN: The people to which we have reference are not in the same position as bondholders and creditors. They are not in the same position at all.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I should like to get this situation clear. Mr. Houlden, are you telling the committee that while you do agree that producers, such as Mr. Whelan had in mind, which are largely the producers of agriculture products, should have protection, you do not agree that they should have any preferred position in Canada over the producers of cans, labels, office machines and things of that sort, in bankruptcy proceedings?

Mr. HOULDEN: I agree with that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You feel that they should be in a preferred position?

Mr. HOULDEN: No, I do not think they should be in a preferred position. I think there must be some other solution to this problem than the one suggested by this bill. For instance, the province of Manitoba has passed legislation providing for bonding. I think similar legislation exists in the state of New York. I do not believe the proposal contained in this present bill provides a solution.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You do not think the primary producer should be in a preferred position. I gather from your brief that you have two main foundations upon which you base your objection. You have just stated the first of these foundations. The second basis seems to be found on page 4 of your brief and involves a question of business acumen on the part of the producer. Mr. Houlden, are you really seriously trying to tell us that a man who spends most of his time producing tomatoes or corn has the opportunity of being aware of what is taking place in the business world to the same extent that you or your association have the opportunity of knowing?

Mr. HOULDEN: Mr. Cameron, facilities are available to the primary producer so that he may become aware of the situation. As Mr. Whelan has said if a man is operating a large one crop farm, I do not see any reason why credit information is not available to him.

Following up the discussion regarding the Graham Food Products situation, in the event credit information had been available at that time would not the primary producers have sold their products to that company in any event?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Houlden, that particular case has still to be investigated further by this committee, and I hope to ask the Bankers' Association some rather pointed questions in that regard. I appreciate that information was withheld from the producers and misinformation was supplied.

Mr. HOULDEN: You do appreciate the fact that this bill would not have been a solution in that situation, because this bill has reference to the wholesale purchaser having possession of the goods at the date of the bankruptcy. In the case to which you have referred there never was a bankruptcy. The bank had taken possession, so this bill would be of no use under those circumstances.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That was an exceptional case.

Mr. HOULDEN: I feel that was the customary case.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Let us return to our discussion of the business acumen of the individual who spends his time producing agricultural produce. I agree that he is probably much more intelligent than the other people because of the nature of his business, but would you not agree that he does not have the opportunity of knowing what is happening in the business world? You receive reports from various sources, do you not? You receive very specified reports, am I correct?

Mr. NUGENT: Perhaps they should be made available to the farmers.

Mr. HOULDEN: Mr. Cameron, when I say everyone should share equally I am including the small proprietor, the small canner and everyone in that category. Perhaps the small garage operator does not have the same opportunity as a primary producer because the primary producer is a very good customer of his bank whereas the small garage proprietor may not be an important customer. The primary producer may be in a better position to get information from his bank than the small garage proprietor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You base the whole situation on the principle of *caveat venditor*?

Mr. HOULDEN: Is that not the essence of our whole economic system?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am afraid it is, and that is why I should like to see some effort made to redress the balance occasionally. I do not like to see cases seriously presented which are based to my mind, on completely unethical attitudes. Thank you.

Mr. NUGENT: Mr. Chairman, through the witness I should like to clarify the situation for the benefit of the members of this committee. The term "primary producer" is not mentioned here, but I should like to go through a few of the categories covered by the witness. For instance, the feller of trees who hauls the logs to the mill is covered by this bill, is he not?

Mr. HOULDEN: Yes.

Mr. NUGENT: The saw mill where these logs are cut into rough lumber would also be covered by this bill?

Mr. HOULDEN: That is my point.

Mr. NUGENT: If that lumber went to a planing mill would that mill not also be covered?

Mr. HOULDEN: That is correct, and let us go further.

Mr. NUGENT: If the finished lumber went to a furniture manufacturer, or a window frame maker, would they not also be covered?

Mr. HOULDEN: I think perhaps you have gone a little far in that case, but let us consider the lumber dealer. Would not a lumber dealer dealing in this produce come within the meaning of this proposed section?

Mr. NUGENT: I was just trying to show through your testimony that this bill is not related only to the primary producer of the product, whether the product is agricultural or otherwise.

Mr. HOULDEN: That is right.

Mr. NUGENT: It is obvious from your brief that this whole bill does not meet with your pleasure. Is there any other specific observation that you as a lawyer would like to make in regard to the drafting of this bill even in the event you agreed with it?

Mr. HOULDEN: I mentioned to Mr. Cameron that the bill only refers to the situation where the purchaser is in possession of the goods. Anyone present who has done bankruptcy work knows that that is an exception. In most bankruptcy cases of this type the secured creditors have come and taken possession of the goods so that this bill would not be of any use.

I have made reference to a number of objections in the brief. There is some peculiar wording in this bill. It states that when insolvency takes place the property will be held by the bankruptcy in trust. I would find it very peculiar to have a debtor holding goods in trust.

It goes on to state in paragraph two that the property shall vest in the court in trust. The court is not a trustee. I think the property should be held by the trustee in bankruptcy because he is the one who will wind up the situation.

The bill also states that there is a reservation in respect of the rights or interests of a bank or the Industrial Development Bank, but a private lending institution as a result of the adoption of this bill will be completely out of luck. There is no protection offered to such a lender.

Paragraph 2 (d) states that the property shall go to the trustee of the estate of the bankrupt subject to any right or interest that a bank incorporated under the Bank Act or the Industrial Development Bank, but it says nothing about the rights of private lending institutions.

I think those are the other matters which I felt should be mentioned.

Mr. NUGENT: Thank you, Mr. Chairman.

The CHAIRMAN: Gentlemen, at the beginning of our meetings I normally identify the witnesses. I am afraid I did not do that today and there has been some confusion. On my immediate right is Mr. Houlden who is counsel for the association. Next to Mr. Houlden is Mr. Houghton the manager of the National Adjustment Bureau Services of the Association and the third gentleman is Mr. Biddell who is trustee with the Clarkson, Company Limited.

Mr. NUGENT: Mr. Chairman, I should like to ask one further question if I may. The Canadian Credit Men's Association does make credit reports available. Is there any reason why these primary producers cannot contact your association and get this information if they wish?

Mr. HOUGHTON: They would have to be members of our association, and there are certain requirements. Certainly any producer is eligible to apply for membership in our association.

Mr. NUGENT: All a primary producer would have to do to get the information would be to ask someone who is a member of your association for that information?

Mr. HOUGHTON: No, I cannot agree with that statement because our information is given in confidence to our members for their sole use and should not be passed on.

Mr. DOUGLAS: How much would it cost a primary producer to become a member of the association?

Mr. HOUGHTON: Our membership rates vary of course, with the amount of usage our members make of the association. The cost runs as low as \$130.00

per year to perhaps many thousands in the case of larger companies such as General Electric.

Mr. KLEIN: In many localities would not the primary producer and the processor deal with the same bank in a small community.

Mr. HOULDEN: I think that situation would be likely, Mr. Klein.

Mr. KLEIN: Would you consider a report from any ordinary branch manager of a bank as being reliable.

Mr. HOULDEN: Such a report would be considered in the same way as any credit report. Sometimes credit reports are wrong, but generally speaking they are reliable.

Mr. KLEIN: Is that true of information received from a branch bank manager?

Mr. HOULDEN: Yes. He is the man who should know what is happening.

Mr. KLEIN: Would you accept a telephone recommendation from a manager of a branch bank in respect of credit?

Mr. HOULDEN: I would rather have further investigation made. One would perhaps talk to the bank manager and get as much information from him as possible. One could ask for the financial statement of the cannery with which the producer is dealing. This is the type of thing our members do. These are the type of credit checks which can be made.

Mr. KLEIN: Is not the one crop farmer a captive creditor of the processor?

Mr. HOULDEN: I am sorry that this is perhaps true. As I have said to Mr. Cameron, it is a very unfortunate situation. I am not a farmer myself, I am a city man, but I think it may well be what happens.

Mr. KLEIN: I think everyone will appreciate the fact that the product of the farmer is usually perishable, and being so, the farmer is a captive creditor of the processor because he simply has to sell his product.

Mr. HOULDEN: There are many people in the canning business. It may well be that in given areas there is only one canner, as Mr. Cameron has suggested, and if that is so then you have a bad situation. If there is more than one canner in an area the farmer can sell his product to other canneries because other markets are available.

Mr. KLEIN: It seems to me that every witness before this committee has expressed sympathy for the farmer, yet no one has told us how to transfer this sympathy into something concrete.

Mr. HOULDEN: This has been done, Mr. Klein. Mr. Biddell is able to explain this.

Mr. BIDDELL: The whole purpose of my brief was to cover this situation.

The CHAIRMAN: Mr. Biddell, a moment ago you suggested that you could summarize your brief very shortly for us. Perhaps you could answer questions which have been asked by doing so at this stage.

Mr. NUGENT: I think that would be a good idea, Mr. Chairman.

The CHAIRMAN: Several other individuals have indicated their desire to ask questions, but apparently the content of your brief falls directly within the sphere of Mr. Klein's questions. What is the wish of the committee in this regard?

Mr. AIKEN: Mr. Chairman, if the brief of the Clarkson, Gordon Company can be consolidated in an answer to the question perhaps it would be a good idea to deal with it now I am afraid we are not going to have very much time this morning to deal with this second brief.

The CHAIRMAN: Perhaps the committee will agree to allow Mr. Biddell to summarize his brief in answer to Mr. Klein's question.

Mr. HABEL: Mr. Chairman, I have a question I should like to ask.

The CHAIRMAN: Several members of this committee have indicated they wish to ask questions but apparently the answers to some questions are contained in Mr. Biddell's brief, and it might save the time of this committee if Mr. Biddell were to summarize that brief now.

Mr. HABEL: Perhaps the answer to the question I wish to ask will clarify the whole situation.

Mr. HOUGHTON, if the primary producers were to organize one group, such as a co-operative, would your association be willing to accept a representative of that group as a member of your association so that information could be provided to the producers?

Mr. HOUGHTON: I am of the opinion that such an arrangement could be made. I certainly would have to discuss this with our board of directors. We do not have any members of this type at the present time, but this suggestion is worthy of exploration.

The CHAIRMAN: Does the committee wish Mr. Biddell to summarize his brief at this stage?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Klein, would you restate your question?

Mr. KLEIN: Mr. Chairman, I should like to rephrase my question keeping in mind the last question and answer. I do not think the problem can be solved by making credit information available to the farmers. I do not think this will solve the farmers' problems. In many cases the farmer must sell his produce to a single processor, and whether his credit is good or not makes little difference to the situation. Such a processor under those circumstances can actually exploit the farmer because he knows the farmer must sell his product.

Mr. HOUGHTON: Perhaps Mr. Biddell will cover that situation in his answer, Mr. Klein.

Mr. J. L. BIDDELL (*C.A., Clarkson Company, Ltd.*): Thank you, Mr. Chairman.

I have prepared a brief and copies will be left with you gentlemen. I do not want to read this brief but I should like to summarize it very briefly for you.

I did not have opportunity of reading all of the evidence that has been presented to this committee before preparing this brief and perhaps it would have been a good deal shorter if I had done so. However, I would just like to emphasize a few things, many of which may already have been covered by other witnesses.

It seems to me that certain things are fundamental to this whole problem.

At the outset I should like to say that I agree with the purposes of the sponsor of this bill. I do feel that there is a real need for some additional protective measures for the small independent producer, but in the case of farmers particularly, and wood cutters, perhaps, whose whole year's income is tied up in one crop which on occasion is lost, there is a need for protection. I must state that I disagree completely with the method suggested in Bill C-5. The reason I disagree is because I am thoroughly convinced that it will not work.

My own experience is that of a licensed trustee. I have done no other work of any kind in the last 15 years. I have handled a great many bankruptcies and insolvency situations during that period across Canada. I have spent a great deal of time, particularly in the last two or three years, working with various organizations in an attempt to improve bankruptcy and credit legislation in order to take care of special cases such as we have been discussing, particularly with a view to avoiding fraudulent transactions, of which

we have had far too many in recent times. I am very interested to see that something is done for the protection of primary producers, but I am quite sure this cannot be done effectively under the Bankruptcy Act.

In regard to that specific subject, what is being attempted through the passage of this bill is to prevent lenders to primary producers from obtaining security against their losses. Specifically Bill C-5 refers to chartered banks and to the Industrial Development Bank. I am quite sure that the federal government has the power to prevent chartered banks and the Industrial Development Bank from accepting primary products as security. Certainly the federal government could stop them from doing so. I am equally satisfied that the federal government could not say, through any legislation it might pass, that John Smith, a private lender, cannot lend \$25,000 to a canner and accept a chattel mortgage on the inventory as security, or perhaps a floating charge debenture, because I am quite sure that regardless of the legislation the federal government might pass, it cannot interfere with security of that type. What happens in this insolvency situation is this: the majority are precipitated by a secured creditor who has made a loan, finds he cannot obtain payment, calls his loan, and seizes his security. This happens long before bankruptcy proceedings commence. Bankruptcy proceedings follow quickly, but almost inevitably, nine out of ten times, the secured creditor goes in and seizes his security. If we look at Bill C-5, it says that the primary products in the possession of the debtor shall be reserved as a trust for the primary producers. By the time the insolvency is recognized those products will no longer be in the possession of the debtor; they will be in the possession of the secured lender who has seized them. If this lender is a chartered bank, the legislation is going to see that this does not happen.

However, I do not think it will be in the power of the federal government to do effectively what Bill C-5 sets out to do. What it will be doing will be to attempt to legislate to disqualify the cheapest source of credit which the producers can obtain, that is the credit they get through the chartered banks, and drive them to much more expensive sources of credit, the private lenders. They will get their loans, but not at 6 per cent. They will get them at anywhere from 12 to 30 per cent. In my practice I see a great deal of this going on. Therefore, I do not think the approach which is being taken by way of amendment to the Bankruptcy Act will work. I doubt very much, on constitutional grounds, that the federal government can make it work.

I am quite certain the other aspects of the bill which say we will take these inventories and vest them in the court will be self-defeating. I have had a great deal of experience in the last few years where the court was the medium to decide how assets would be liquidated. This is fine if the assets are in terms of money, and the only argument is who owns the money; but when the assets are tomatoes, potatoes, or some similar produce, the possibility of the courts being able to deal with them effectively and recover any sensible profit for the people involved is unlikely. You can just forget it; it will not work.

As I have said, I am most interested in seeing some relief being obtained for these people; I think there should be some. I am satisfied there is a way to do it; but it is not by way of amendment of the Bankruptcy Act. All we need to do here is have a very considerable extension of the procedures already in effect in certain places, for instance in the province of Manitoba; this is through a provincial government marketing agency. All day yesterday I had discussions with representatives of the Ontario fruit and vegetable growers association, and then I had a long meeting with the director of marketing services of the department of agriculture of the province of Ontario. I am quite satisfied that with a little effort and a little support from gentlemen such as yourselves it would be possible to arrive at a solution to this problem

which will be effective. I am quite certain that Bill C-5 will achieve nothing. The approach should be that the marketing organizations set up by practically every province should go further than they presently do.

The farmer, not unreasonably, seeing his local cannery obtain a licence from the province, is entitled to assume he can safely sell to that cannery and get paid. Unfortunately, the marketing services are not going far enough at the present time. They are handing out licences without paying proper attention to the financial stability of the people they are licensing. As many of you know, in the province of Ontario, the Ontario department of highways had a great deal of trouble with its contractors, and a few years ago they set up a system called prequalification rating. They insist on obtaining financial statements from all contractors who wish to bid on government road contracts. Based on the financial results, they rate these contractors and say they are in class A, B or C. This determines the amount of work these contractors are entitled to take. This has proven to be extremely valuable. It has reduced the number of insolvencies of contractors, and has reduced substantially the losses to suppliers of those contractors.

I think there is a direct analogy, if the marketing services adopt the same approach and require those producers who come to them for a licence to submit financial information, and then rate them according to a pre-set formula.

I will pick one company out of the air as an example; let us say Campbell's Soup. Clearly its financial statements would show that the suppliers are not running any more than a nominal risk in supplying to that company; but assume that the A.B.C. Canning Company has no liquid position. Then, the marketing agency would say to the A.B.C. Canning Company "We cannot give you a licence unless you put up a payment bond by a surety company with us in favour of the primary producer"; not in favour of the canner, or the sugar supplier, but in favour of the primary producer, the fellow who has his whole income for the year in one shot. This is being done at the present time in the province of Manitoba. I do not know by how many of their marketing associations this is being done, but certainly it is being done by some of them, and I believe with success. I do believe there is every likelihood that the department of agriculture of the province of Ontario will be prepared to pursue this in an intensive fashion. I suggest it is in this area that you should be directing your attention, if your aim is to do something for this group of prime producers. I am quite sure it can be done successfully.

In the last few years I have spent about 20 per cent of my time trying to work out the problems in this area. I, personally, am most interested in this problem and am quite prepared to devote a good deal of my time to it. I have had consultation with a senior official in the Ontario department of agriculture yesterday, and I am quite sure it can be done successfully. I am equally certain that if you attempt to tamper with the Bankruptcy Act and completely change the policy of the act by trying to take care of this problem, which is serious for those people involved—it really is a very small problem in relation to our economy—and if you are going to completely upset the scheme of the Bankruptcy Act by adopting a completely new policy, I think you are just opening a Pandora's box, and the problems you will create will be very much worse than the disease. The ramifications in respect of the effect on the supply of credit in Canada, I feel, will be something you will very much regret.

Quite frankly, I think if you open this can of worms, it would inevitably result in the return of the tight money situation for the small businessman, the like of which we have never experienced. There is a problem, but the solution is not by amendment to the Bankruptcy Act as proposed in this bill.

Mr. KLEIN: Your idea of a bonding company seems to be very good. However, do you think that the bonding company will bond the primary

producer if we do not give the primary producer some of the protection which this bill wants to give him? For the moment, I am not saying this is the proper bill; but do you think the bonding company will go along with the principle when there is not protection to the bonding company?

Mr. BIDDELL: I am quite sure the bonding companies will. They are doing it in Manitoba.

Mr. KLEIN: To what extent?

Mr. BIDDELL: I do not know that, sir. I have not had an opportunity to review that. I do know, however, that they are doing it to a large extent in the construction industry, and the problem is no different.

I might be able to throw a little light on the position of the bonding company when it does this. When a processor applies to a surety company for a bond he has to personally guarantee it. The owner of the cannery will have to give his personal guarantee to the bonding company. This is a great protection to the bonding company and a great assurance to the bonding company, because at this stage the owner of the cannery has all his personal resources behind seeing that the beneficiary of the bond will get paid. You may be sure that if this rule is adopted, the owner of the cannery is going to see that the primary producers, who really have his personal guarantee through the bond, will get paid first. This would be the most beneficial approach you could take in an effort to protect these people.

Mr. KLEIN: Your analogy of the bond supplied to builders or construction people is not a good one. The builder has the owner to turn to for the payment of the construction when the construction is completed. The bond company merely guarantees the owner that the building will be completed. He goes to the owner for the payment. In the case of the processor you have to go to the debtor of the processor to collect the money and he may not have it at this time.

Mr. BIDDELL: You and I are talking about two different types of bonds. The bond to which you refer is the performance bond. I am speaking about a payment bond. The use of these is increasing to a tremendous degree. This bond says that if the contractor has not paid all of his suppliers and subcontractors on the contract, then the surety company will pay them. That is the sort of bond I am speaking of which should be supplied by the canner to the local agency for the benefit specifically of these growers.

Mr. KLEIN: I think you said this in your brief, but I wonder if you would see any objection, for the purposes of distribution under the Bankruptcy Act, if the farmer or primary producer were put in the same category as the workmen, and the travelling salesmen, and so on, with regard to at least a percentage of his primary product being distributed by preference?

Mr. BIDDELL: Until you added that last sentence I was going to have a great deal of objection to the idea. If we found it was impossible or impractical to get much better protection for the farmer by the means I suggest, that is the extension of the activities of the marketing agencies and bonding, then I would have no real personal objection to the farmer being included in some fashion in section 95, so that he has a priority. However, it would be quite difficult to do that. You would have to be very careful to avoid fraudulent transactions being perpetrated on other creditors by way of this media. Presently we say that workmen have it for three months or \$500 but when you are talking about an unlimited amount of credit which may be given by farmers to a processor, it may be that the farmer is really a company owned by the processor himself, and this would lead to a great deal of fraud and collusion. If it were necessary to review section 95 in order to do this, it would have to be done most carefully.

Mr. McLEAN (*Charlotte*): Mr. Houlden stated that the can maker, the sugar people and the label people were all in the same boat. I would say they are not in the same boat. Section 88 generally takes care of it. They have ten days to collect their bills; their invoice generally is dated at ten days, and the processor gets the money from the bank. It is section 88 which protects those people.

Mr. HOULDEN: No. The only protection in section 88 is for wage earners.

Mr. McLEAN (*Charlotte*): Section 88 gives the bank the goods.

Mr. HOULDEN: But there is no obligation to pay anyone except the wage earners.

Mr. McLEAN (*Charlotte*): No, but they have the goods and they have already paid for the cans and the labels. I know; we have been in the business. We had to pay for our cans in ten days. The primary producer is the long range fellow and he has no protection. Section 88 protects all these other fellows because the bank advances the money. In the United States they have no section 88.

Mr. HOULDEN: They have the same thing in the United States.

Mr. McLEAN (*Charlotte*): They have no section 88.

Mr. HOULDEN: But they do it under what we call section 86.

Mr. McLEAN (*Charlotte*): There is no section 88.

Mr. HOULDEN: They do it by field warehousing which is much more expensive.

Mr. McLEAN (*Charlotte*): We are a Canadian concern and we have our warehouses full of goods. Will you explain to me how the bank is going to do it down in New York?

Mr. HOULDEN: They do it quite effectively.

Mr. AIKEN: Mr. Chairman, I would like to ask a supplementary question of Mr. Biddell concerning this question of bonding. Would it be that if the processor was not in a stable financial position he would not get a bond, and would therefore not get a licence?

Mr. BIDDELL: It would depend on the policy of the marketing association. I believe it could be done in this fashion: the marketing agency would establish a set of criteria and provided the company ranked at the top it would get a licence and would not be required to put up a bond. If its financial position was such that it did not rank at the top, it would be given a class B licence by putting up a bond. The growers would know what the class B licence was.

It was pointed out to me yesterday by the Department of Agriculture that in many instances where they have attempted licensing they have had delegations of growers who have come and said: "We want you to give this fellow a licence; he is a good fellow." I said that if this happens, I think it would be perfectly proper to give such a person a class C licence which would clearly indicate to the growers that he did not meet the financial requirements and did not put up a bond, and they would deal with him at their own peril. I do not think you can do more than that.

Mr. DOUGLAS: You say "deal with him at their own peril". Are you not saying that if a farmer happens to be located in an area where there is only one cannery, that it is a personal risk and we are throwing you to the wolves?

Mr. BIDDELL: I guess his choice would be comparatively simple. He could join with others and form a co-operative, or not deal with him. Surely if someone's financial position does not measure up so that he can get a bond, if the farmer still wants to deal with him, we cannot help it.

Mr. DOUGLAS: The point is not that he wants to deal with him, but he has no choice. Therefore, if the firm in question goes bankrupt, the farmer who has put his entire year's labour into the product is not given any protection.

Mr. BIDDELL: If the government decides it wants to give an insurance policy to anybody who wants to sell goods guaranteeing he will get paid, that is something which goes considerably beyond the scope of this bill. If this is government policy, it can be done. That is the area in which I think you are suggesting we should try to protect this fellow.

Mr. AIKEN: Mr Douglas followed up what I was trying to get at. To point out the danger of a situation does not help. We point out the dangers of people taking loans with a large rate of interest from so-called loan sharks; we point out the dangers of dealing with people who are not financially stable. But if they have no other choice, then I do not believe this is enough. I know you do not have the final say in this, but is it going far enough to suggest that the processors should merely be rated. Under much of the marketing legislation a producer is required to sell to a certain processor. Should it not be carried to the full length; that is, force the processors to be bonded, and if they are not in the financial position where anybody will bond them, surely they should not be dealing with the public.

Mr. BIDDELL: I agree with you, but I raised this other aspect because the government official told me that they frequently had delegations of growers who came and said, "We want you to give this fellow a licence".

Mr. AIKEN: May I ask Mr. Houlden a question? If the section was more clearly defined, and if it were limited to the type of person we are trying to protect, the agricultural producer with one crop, would you change your opinion?

Mr. HOULDEN: No. It is the interference with the rights of secured creditors that I think is wrong with this bill. That is the great peril. I am all for finding a solution. I do not agree with some of Mr. Biddell's comments, but the greatest weakness in this bill is that it seeks to do away with the rights of secured creditors.

Mr. DOUGLAS: What do you say when it comes time to sell the producer's product if he gets 25 per cent of the return and the people supplying the cans, the labels and the administration get 75 per cent?

Mr. HOULDEN: I still think this bill is wrong in principle.

Mr. WHELAN: Mr. Biddell suggested that the banks would tighten up on credit. I gather from talking to some of these processors who are good friends of mine that if it is loose credit now, they do not really realize it. So far as bonding is concerned, I think Mr. Aiken has suggested that some sort of bonding or insurance should be provided for the processors. We are in full accord with this. Those who have some experience with farm marketing groups in Ontario will realize that their ability now to protect the primary producer is nil. As will be seen in the evidence of Mr. Sorel in the province of Quebec they have the 30-day arrangement, but in his evidence I believe he stated that by the end of the 30 days there is nothing left. He gave us personal experience as to what happens. You say that you cannot give the primary producer preferred treatment. How about the writers? When they give their proofs to the printer, they enjoy preferred treatment as a primary producer. They produce the transcript and nobody can take it; it is theirs.

Mr. HOULDEN: They are secured creditors.

Mr. WHELAN: I am only a layman and I cannot understand why a primary producer should not be a secured creditor.

Mr. HOULDEN: He can be. He can go to the cannery and say "Before I give you my produce I want a debenture."

Mr. WHELAN: Not in our province. The processor can come in and harvest the crop if you refuse. You are at his mercy. I am really happy to see that we have at least alarmed certain people in respect of the provincial legislation. I think there probably still should be some federal legislation. It is also quite obvious to me that we have alarmed some more people who are at the head table. This is good. It means we may get something out of this in the long run, whether it is in its present form or however it may be.

Mr. BIDDELL: I think you will get something, but I hope you do not get it by way of a bankruptcy amendment, because I do not think it will give you what you want.

Mr. WHELAN: In my investigation in respect of Bill C-5 I have learned more about bankruptcy than I ever had previously. There should be some changes in the law somewhere.

The CHAIRMAN: Gentlemen, may I on behalf of the committee extend our gratitude to you for being here this morning, and particularly Mr. Biddell who did an excellent job in summarizing his brief.

May I remind members that our next meeting is on November 15 at which time we will have before us the Ontario fruit and vegetable growers association.

The meeting stands adjourned until November 15.

APPENDIX A

THE CLARKSON COMPANY LIMITED

Trustees, Receivers, Liquidators
Toronto 1, Canada

November 7, 1963.

E. T. Asselin, Esq., M.P.,
Chairman,
Standing Committee on Banking and Commerce,
Ottawa, Canada.

Dear Sir:—

I have reviewed with interest Bill C-5 which is presently under discussion in your Committee and a number of the submissions that have been made to your Committee in connection with it. In this Brief I should like to put forward a number of comments concerning this Bill and the purpose for which it is intended.

(1) I am entirely in sympathy with the motives of the sponsor of this Bill in attempting to obtain some improvement in the position of the small independent producer of primary materials—products of the farm, the forest and the fishery who for economic reasons over which he has little control is required to sell perhaps his entire season's output to a processor, and if that processor fails to pay him, finds himself in dire personal straits. Such an independent producer—who is really little different from a wage earner who is presently granted special consideration in an insolvency situation—is entitled to some special measure of protection.

(2) I am of the opinion however, that the remedy proposed by Bill C-5 to take care of this problem would not only fail to achieve its purpose but would, if enacted, have a most serious and undesirable effect on the economy of Canada. I am quite firmly convinced that Bill C-5 will simply not work. It will not achieve the benefits that are being sought for the small independent producer and I must confess that I think it extremely doubtful that any other legislation that the Federal Government has the power to create can achieve the purpose of the sponsors of this Bill.

(3) There are practical means available to achieve a reasonable measure of protection for these small independent producers. These measures do not require Federal legislation but rather involve action by the Provincial Governments through agencies which they have set up to assist in the orderly marketing of primary products. The Federal Government should confine its activities in support of the independent producers to encouraging and assisting the provinces to take action in this area. I believe that legislation such as Bill C-5 if instituted by the Federal Government will inevitably result in an attempted cure which will be much worse than the disease.

The Position of The Individual Producer

In each of the fields of agriculture, fishing and forestry we have a very considerable number of persons who by their own labour, or perhaps with the assistance of a few employees, produce one or two crops out of their whole

year's effort. Because of their location or perhaps in part because of the activities of provincial government marketing agencies, many of these producers have little choice but to sell all of their product, frequently in a short space of time, to a single processor. On occasions certain of these processors become insolvent and the primary producer who may have his whole year's income at risk obtain little or no recovery.

The Bankruptcy Act recognizes that certain types of creditors are entitled to a priority in the settlement of their claims for reasons that are valid in the light of the social and economic needs of the country. The most important group preferred by the Bankruptcy Act are wage earners and no one can deny that they are entitled to special protection when their employer becomes insolvent. The wage earner, while technically free to withhold his services, must work to exist and his mobility in seeking work is considerably restricted. It is essential from both a social and economic standpoint that some special arrangement should exist whereby the wage earner can collect what is due to him.

It is not at all difficult to justify similar treatment for the small independent producer of primary products. One must recognize however that only certain primary producers can reasonably be put in the same category as the wage earner. Many primary producers are in fact large commercial ventures, some of them being owned by the processing and distributing organizations which take their production. Any attempt to provide a special measure of protection to a particular class of creditor will inevitably result in discrimination against other creditors involved in the affair. In order that such discrimination be held to a minimum great care must be taken to see that this special protection should only be available to those who are really entitled to it. The machinery proposed under Bill C-5 does not deal adequately with this facet of the problem.

Protection of the Primary Producer By Federal Legislation

I do not believe that it is within the power of the Federal Government to enact legislation which will effectively achieve the aims of the sponsors of Bill C-5. Through Federal legislation it is possible to restrict the rights of the chartered banks and The Industrial Development Bank and to provide that in an insolvency situation these banks will be prevented from obtaining any secured claim on primary products. Such action taken by the Federal Government however would not necessarily ensure that the primary producers would obtain a greater recovery when processors get into financial difficulty.

Under the British North America Act the fields of banking and of insolvency were placed under Federal jurisdiction but all matters concerning property and civil rights were placed in the jurisdiction of the provinces. Since the Chartered Banks and The Industrial Development Bank are controlled by Federal legislation the Federal Government could effectively prevent the Chartered Banks and The Industrial Development Bank from taking primary products as security. I think it extremely doubtful however that Federal legislation could be enacted which would effectively prevent other lending agencies or private lenders from taking these products as security for loans. The Federal Government could if it chose, refuse to permit the chartered banks and its own agency, The Industrial Development Bank, to make secured loans to processors but if this were done the inevitable result would be that the processors would obtain their loans from agencies and individuals over whom the Federal Government has no control. All that would be achieved by this approach would be to make it more difficult for processors to obtain operating loans. They would obtain them in any event but at a substantially higher interest cost.

I do not believe that the Federal Government has the power to legislate that a private individual or lending agency cannot make a loan secured by a

chattel mortgage or a bill of sale or a floating charge debenture on primary products in the hands of a processor. If this be true all that Bill C-5 would achieve would be to disqualify the processors' cheapest source of credit in favour of other more expensive sources of credit, many of whom would be unlikely to be as conscious of their responsibility to the public at large as are the chartered banks.

Bill C-5 would specifically exclude the chartered banks and The Industrial Development Bank from obtaining security on primary products in the hands of a processor and also decrees that primary products in the possession of a processor are held by him in trust for any unpaid producers who supplied the products. I doubt that the Federal Government has the power to establish such a trust and effectively prevent any private lender from obtaining title to these products arising out of a loan agreement with the processor. I believe that any province of Canada might be able to establish an effective trust in this fashion in somewhat the same manner as certain of the provinces have done with the proceeds of construction contracts under their Mechanics' Lien Acts. Even if this could be done however I do not think that it would be desirable.

From considerable experience in dealing with the trust provisions of the Mechanics' Lien Act, nothing is so obvious to me as the fact that in this area the wheels of justice grind extremely slowly. This is not too serious a problem when we are concerned with the disposition of a fund of money which is not subject to spoilage and does not require processing and marketing while the Courts determine who owns it. To attempt to establish a trust for tomatoes however presents vastly different problems. In the event of the insolvency of a canner, the Trustee would immediately be faced with the problem of marketing the tomatoes already canned, canning the tomatoes in process, and processing the tomatoes on hand. I see no possibility whatsoever of the machinery of the Courts being able to deal effectively with a problem of this kind in such a manner as to achieve a worth while result for the beneficiaries of the trust. Proceeding through the Courts to obtain instructions and approval for the processing and marketing of almost any commodity would I am sure be a self-defeating exercise.

How Can The Small Independent Producer Of Primary Products Be Protected

Perhaps the most frustrating aspect of attempting to devise new measures in the field of commercial law is to be frequently reminded that what you are attempting to do has merit but is probably unconstitutional. I have felt it necessary to raise this question in this Brief however because I am quite convinced that the solution to this problem lies mainly outside the field of Federal jurisdiction. I believe that attempts to solve it through Federal legislation are a waste of effort and can only result in greater problems than we are already facing. I do believe that there is a relatively simple solution to this problem however and that relief can be obtained for the small independent primary producer if the various provinces of Canada can be persuaded to extend the activities of the primary products marketing legislation which most of them have already instituted.

For the past several years the Ontario Department of Highways has been concerned with the problem of the over-expansion of highway contractors, the resulting insolvency of many of them and the serious losses suffered by their suppliers. Some time ago that Department instituted procedures which involved the grading of contracting companies according to their financial resources and set up a plan of pre-qualification under which the Department officials reviewed the affairs of each contractor who proposed to bid on Ontario Highway

contracts in order to determine the quantity of work which the contractor would be entitled to be awarded during any period.

The Government of Ontario has recently taken a further step in the construction field by enacting a Bill that provides that all suppliers to general contractors performing a contract for the Ontario Department of Public Works will be paid by the Province in the event that the general contractor becomes insolvent and is unable to pay his debts. In order to make this legislation workable the Ontario Government intends to require every general contractor who obtains a public works contract to file with the province a bond issued by a surety company which will provide payment in full to the suppliers on the contract if the general contractor defaults.

Now I agree that the field of construction is very different from the problems of primary producers but I have referred to the steps which are taken in the construction field in Ontario because I believe that these same principles can and should be applied to the control of the processing of primary products in the field of agriculture, the forestry and the fishery. Many of the provinces have set up government marketing agencies most of which require that a processor must have a licence from the agency before he is entitled to purchase the primary product from the producer. Many primary producers being aware that a processor has been granted a licence by the government agency not unreasonably assume that the agency has taken some recognition of the processor's financial stability. When such a licenced processor suddenly becomes insolvent it is understandable that the producers that have sold him their whole season's crop feel that they have been improperly dealt with.

Many of the government marketing agencies do in fact attempt to obtain financial information from the processors before granting them a licence. Whether or not these marketing agencies are sufficiently thorough in their review in this area is a matter of opinion. There would seem to be reasonable grounds for assuming that in many instances these investigations do not go far enough and processors are licenced even though their true financial position does not warrant their being entitled to further credit from anyone.

A number of the submissions that have been made concerning Bill C-5 suggest that the primary producer is no more entitled to special consideration than the supplier of cans or packing cases since he has as good an opportunity as anyone else to examine into the credit worthiness of the processor to whom he proposes to sell his products. In a great many instances this is not the case. It is difficult enough these days for a large commercial organization with a trained credit staff to obtain reliable information concerning the financial position of a prospective customer. For an independent farmer or fisherman to obtain such information is in many instances virtually impossible.

There is no reason however why a provincial government marketing agency should have difficulty in making a reasonably reliable estimate of the financial stability of an applicant for a licence as a processor. The marketing agency can insist on receiving financial statements and there would be every justification for it refusing a licence if it was denied information or if the information furnished was inadequate or unsatisfactory.

In my own view the marketing agencies should go further than merely reviewing financial information. Unless the financial stability of the processor in relation to its proposed volume of purchases is unquestionably sound, the marketing agency should require the processor to post with it a bond of a surety company which would protect the primary producers in the event of the non-payment of their accounts by the processor. This procedure has already been put into effect by certain of the government marketing agencies of the Province of Manitoba and from all accounts is working very well.

I believe that it is in this area—in the extension of the responsibility and requirements of the provincial government marketing agencies that efforts

should be made to improve the lot of the small individual producer of primary products. It has already been demonstrated that this has been done successfully in the marketing of certain primary products. I believe that the further extension of these procedures should be taken by each of the provincial governments. Such a program would achieve the desired protection for the small independent producers without restricting the supply of credit from the banks and other lenders which must continue to be available to our processing and manufacturing industries.

Conclusion

The problems of credit—its supply, and the effect of credit losses in insolvency situations—are problems which vitally affect the growth and well being of the Canadian economy. There is no doubt that our commercial laws dealing with insolvency matters require very considerable amendment. Credit losses are far too high, not only by primary producers but by businesses of every type. Many submissions have been made to the different levels of government in the past year or two which are still awaiting consideration and I am sure that your Committee has a great task ahead in sorting out these many recommendations and assisting in the development of more satisfactory credit regulations in all areas.

While there is a natural tendency to rush into amendments which will give relief to certain groups who obviously require it, great care must be taken to see that in the process we do not inhibit the supply of credit which can be made available to the Canadian businessman. I do not believe that under our free enterprise system it is practical to permit everybody to give credit indiscriminately and provide a government guaranteed insurance policy that all accounts will be paid. All credit granters, even the wage earner, must incur some risk under our system. Our whole way of life depends on the right of an individual to establish a business of his own and by obtaining credit to supplement his own investment and efforts, have a greater opportunity to grow and prosper.

It would be very easy to develop such restrictive credit legislation that lenders, be they the chartered banks or commercial organizations or private individuals, could not obtain any reasonable security for their loans. Under such circumstances in order to obtain capital, businessmen would have to pay a very much higher rate of interest than is presently the case and the small businessman would find himself in a "tight money" situation far more drastic than anything we have experienced in recent years. Every amendment which is proposed in our credit and insolvency laws must be carefully considered in the light of its possible effect on the supply of credit.

I feel very strongly that the measures proposed in Bill C-5 would have a drastic effect on the supply of credit in Canada and would react most unfavourably on the Canadian economy. Even if there were no alternative relieving measures available to assist primary producers I believe that it would be a great mistake to enact the provisions of Bill C-5. There would quite obviously appear to be alternative measures available however, which would be much more effective and would not result in the disruption of established credit procedures which have served Canada very well. Under the circumstances I believe that the Federal Government and your Committee should be devoting its energies to encouraging and assisting the provincial governments to adopt the appropriate measures in their own areas and should refrain from enacting amendments to the Bankruptcy Act of the type proposed in Bill C-5.

Respectfully submitted,

J. L. Biddell.



(HOUSE OF COMMONS)
(First session—Twenty-sixth Parliament)
1963

STANDING COMMITTEE

ON

ANADA, **BANKING AND COMMERCE**

(Chairman: EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

(FRIDAY, NOVEMBER 15, 1963)

Respecting

(Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing))

WITNESSES:

(Dr. John F. Brown, Secretary-Treasurer, Ontario Fruit and Vegetable Growers' Association; Mr. P. A. Fisher, Director, Ontario Tender Fruit Growers' Marketing Board; Mr. Keith Matthie, Secretary, Ontario Tender Fruit Growers' Marketing Board; Mr. E. R. Ruthven, Director, Ontario Vegetable Growers' Marketing Board.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Irvine,	Pilon,
Boulanger,	Jewett (<i>Miss</i>),	Ryan,
Cameron (<i>Nanaimo-</i>	Kelly,	Rynard,
<i>Cowichan-The Islands</i>)	Kindt,	Sauvé,
Chaplin,	Klein,	Scott,
Chrétien,	Lloyd,	Skoreyko,
Côté (<i>Chicoutimi</i>),	Macaluso,	Tardif,
Douglas,	McLean (<i>Charlotte</i>),	Thomas,
Flemming (<i>Victoria-</i>	Monteith,	Thompson,
<i>Carleton</i>),	More,	Vincent,
Gelber,	Morison,	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTIONS

Proceedings No. 4—Friday, November 1, 1963.

In the Minutes of Proceedings and Evidence—

Page 127, Line 35:

For “distinction” read “pari passu distribution”.

Page 128, Line 11:

For “form” read “forum”.

Page 131, Line 7:

For “this group” read “other groups”.

Page 136, Line 14:

For “confident” read “competent”.

Page 138, Line 10:

For “producers” read “creditors”.

Page 141, Lines 31 to 33 should read:

“Well, in respect of the 30-day goods provision as such, as I understand it, this lies within the scope of the provinces, as the provision does not come to bear on bankruptcy and insolvency directly in the first instance.”

Proceedings No. 5—Friday, November 8, 1963.

In the Minutes of Proceedings:

The date should read “Friday, November 8, 1963”.

ORDER OF REFERENCE

THURSDAY, November 14, 1963.

Ordered,—That the name of Mr. Irvine be substituted for that of Mr. Muir (*Lisgar*) on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, November 15, 1963.

(14)

The Standing Committee on Banking and Commerce met at 9:20 a.m. this day. In the absence of the Chairman, the Vice-Chairman, Mr. M. J. Moreau, presided.

Members present: Messrs. Addison, Armstrong, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Flemming (*Victoria-Carleton*), Gelber, Gray, Habel, Kindt, Macaluso, McLean (*Charlotte*), Moreau, Nugent, Otto, Pascoe, Rynard, Thomas, Whelan,—(19).

In attendance: Dr. John F. Brown, Secretary-Treasurer, Ontario Fruit and Vegetable Growers' Association; Mr. P. A. Fisher, Director, Ontario Tender Fruit Growers' Marketing Board; Mr. Keith Matthie, Secretary, Ontario Tender Fruit Growers' Marketing Board; Mr. E. R. Ruthven, Director, Ontario Vegetable Growers' Marketing Board.

The Vice-Chairman read a list of certain editorial changes to the Proceedings of November 1, 1963 (Issue No. 4) requested by Mr. J. S. Larose, Superintendent of Bankruptcy, who had been the witness on that date. On motion of Mr. Nugent, seconded by Mr. Habel, the corrections were approved.

Mr. Nugent commented on the lack of progress of the Committee in studying this Bill. He recommended that the Committee report back to the House now, that while in favour of the principles of the Bill, the Committee believes it does not accomplish the purposes for which it was drafted and that consideration be given to the introduction of other legislation. The Vice-Chairman stated that the Committee had requested that certain witnesses be heard to assist in deliberations on the Bill, and should be given the opportunity to hear those witnesses still scheduled to appear.

The Vice-Chairman then introduced the witnesses and suggested that since copies, in English and in French, had been distributed to members, the brief might be taken as read. The Members preferred to hear the brief, however, and Dr. Brown then presented the submission prepared jointly by the Ontario Fruit and Vegetable Growers' Association, the Ontario Asparagus Growers' Marketing Board, the Ontario Berry Growers' Marketing Board, the Ontario Grape Growers' Marketing Board, the Ontario Tender Fruit Growers' Marketing Board, and the Ontario Vegetable Growers' Marketing Board.

On motion of Mr. Gray, seconded by Mr. Cameron,

Resolved,—That Appendix A to the brief presented this day be printed as an Appendix to the Minutes of Proceedings and Evidence. (*See Appendix A*).

Dr. Brown was questioned, assisted by Messrs. Fisher, Matthie and Ruthven.

The Vice-Chairman thanked the witnesses for appearing and presenting their brief.

At 11:00 a.m. the Committee adjourned to Friday, November 22.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 15, 1963.

The VICE CHAIRMAN: Gentlemen we have a quorum.

We have received a letter from Mr. Larose, superintendent of bankruptcy, who gave evidence before this committee last week. He has asked us to accept some editorial changes in the transcript of a minor nature. I wonder whether the committee will approve, as its first order of business, those corrections to the transcript which Mr. Larose has outlined?

Mr. NUGENT: I think perhaps we should hear them read. Are they extensive corrections?

The VICE CHAIRMAN: On page 127, line 30, "distribution" should be "pari passu distribution". On page 128, line 11, "form" should read "forum". The corrections are all of this nature.

Mr. NUGENT: Mr. Chairman, I do not think for the purposes of the record we should accept a motion without hearing the corrections read.

The VICE CHAIRMAN: I shall read the rest. Page 131, line 7: for "this group" read "other groups"; page 136, line 14: for "confident" read "competent"; page 138, line 10: for "producers" read "creditors"; page 141, lines 31 to 33, should read: "Well, in respect of the 30-day goods provision as such, as I understand it, this lies within the scope of the provinces, as the provision does not come to bear on bankruptcy and insolvency directly in the first instance."

Those are the corrections. Will someone move the acceptance of these corrections?

Mr. NUGENT: I so move.

Mr. HABEL: I second the motion.

The VICE CHAIRMAN: I declare the motion carried.

Motion agreed to.

Gentlemen our second order of business is the consideration of Bill C-5 an act to amend the Bankruptcy Act.

We have with us as witnesses, and I will ask them to stand up for identification as I introduce them, Mr. P. A. Fisher, a director of the Ontario tender fruit growers' marketing board, Mr. Keith Matthie, secretary of the Ontario tender fruit growers' marketing board; Mr. E. R. Ruthven, a director of the Ontario vegetable growers' marketing board, and Dr. John F. Brown, secretary treasurer of the Ontario fruit and vegetable growers' association.

I understand Dr. Brown is going to be presenting the brief, a copy of which you received one or two days ago. Copies were distributed in both English and French and I think this morning, depending on the wish of this committee, if all members have read the brief we might dispense with reading it again and just commence our questioning. If anyone feels that Dr. Brown should read the brief I am sure Dr. Brown will be glad to do so. I am prepared to accept guidance from the committee.

Mr. NUGENT: I should like to raise a preliminary point, Mr. Chairman. I only received the brief a day ago, but I think it is only fair to the witnesses and the members of this committee first to comment on the progress to date of this committee in respect of this bill.

It seems to me that certainly the evidence taken at our last meeting indicates that we all concur in the intent of the hon. member who sponsored this bill, but it has become obvious that the bill itself does not accomplish the purpose for which it was drafted. It is too broad in scope, rather like a shot gun instead of a rifle, and would cause more harm than do good.

I do not see how any member of this committee could hope that this bill would be passed by this committee in its present form, to say nothing of whether it would pass in the House of Commons. As long as we are just discussing this bill we are wasting our time.

I do not know how many more meetings are scheduled in respect of this bill, Mr. Chairman, but I do suggest that since we are really out of the realm of considering this bill as a possibility, and meeting only for the point of discussing the merits or demerits of attempting to accomplish something for these people, we should report back to the House of Commons that we cannot pass this bill but that we agree with its intent and should like to see something brought forward in a different form in an attempt to do something to help these people. Such a procedure I suggest would save this committee a great deal of time.

The VICE-CHAIRMAN: Mr. Nugent, I would just say that a number of people wrote to the committee or Mr. Whelan following second reading of this bill indicating that they would like to present briefs and give testimony to this committee. Your steering committee felt that these people should be heard whatever decision was taken by the committee in respect of this bill. I think that testimony will be of some value, whatever we do with this bill, in view of the fact that it would be on the record and perhaps be helpful in arriving at a suitable solution to the problem which the bill has clearly indicated exists. I think that is the reason we have had the number of meetings we have had in respect of this bill. I understand we only have to hear from Mr. Barry, the deputy minister of agriculture, and the Canadian Bankers Association again, which has indicated a desire to appear on one more day to complete the testimony. The clerk also informs me that the committee has asked the Food Processors Association to appear on November 29. I think we should complete this testimony, Mr. Nugent.

MR. NUGENT: Mr. Chairman, if we are just a fact finding body attempting to find out whether something can be done, rather than a committee studying Bill C-5 specifically that is one thing. I notice in the brief to be presented this morning that there is no pretence on the part of the people presenting it that they agree with the bill. They completely endorse the intent, and do so in one or two places.

I think that our method of attempting to find some way of helping primary producers is a bit unorthodox when we are ostensibly studying Bill C-5. I gather from what has been said that we are merely directing the attention of this committee to the problem.

The VICE-CHAIRMAN: Mr. Nugent, our terms of reference indicate that we should study Bill C-5. I suggest that we should not stray from those terms of reference. I think we are limited by those terms of reference to a study of Bill C-5. The testimony given to date by the various witnesses who have appeared certainly is relevant to Bill C-5. I am directed by the desires of the members of this committee. However, the procedure we have been following was endorsed by your steering committee. As I have said, I am prepared to be guided by the wishes of this committee.

MR. OTTO: Mr. Chairman, I am amazed to understand that Mr. Nugent has made up his mind whether this bill will pass or not in this committee.

MR. NUGENT: My remarks had reference to the worthiness of this bill for passage.

Mr. OTTO: Whether or not this bill is to be passed by this committee is a decision which will have to be made by the committee at a later date after we have heard all the witnesses. Mr. Chairman, I suggest that we now hear the witnesses who have appeared this morning.

The VICE-CHAIRMAN: Is it the general wish of this committee to hear the witnesses this morning? Do you wish Dr. Brown to read the brief, or shall we dispense with the reading of the brief and begin by asking questions?

Mr. WHELAN: Mr. Chairman, I only received this brief yesterday, having been away for a part of Wednesday, and have not had time to go through it. I would appreciate very much Dr. Brown reading the brief, as has been done by the other witnesses who have appeared before this committee.

The VICE CHAIRMAN: I am sure Dr. Brown will be glad to read the brief, Mr. Whelan.

Dr. JOHN F. BROWN (*Secretary Treasurer of The Ontario Fruit and Vegetable Growers' Association*): Mr. Chairman, and gentlemen, we are pleased to have this opportunity of presenting a brief, and with your permission I will proceed directly to a reading of the brief as you have it before you.

The fruit and vegetable growers of Ontario, through their several organizations, appreciate the opportunity of presenting a submission to this committee. The submission is being presented jointly on their behalf by the following organizations:—

The Ontario Fruit and Vegetable Growers' Association
The Ontario Asparagus Growers' Marketing Board,
The Ontario Berry Growers' Marketing Board,
The Ontario Grape Growers' Marketing Board,
The Tender Fruit Growers' Marketing Board,
The Ontario Vegetable Growers' Marketing Board.

The first-named organization, since its inception in 1859, has been concerned with the over-all welfare and economic well-being of Ontario growers. The latter five organizations are all marketing boards established under the authority and in accord with the regulations of the Ontario Farm Products Marketing Act. These boards are charged generally with the direct responsibility of establishing terms and conditions of sale, including price, of that portion of the crops under their respective jurisdiction that is sold to processing plants.

These organizations are deeply concerned when their efforts to protect and further their members interests are, from time to time, frustrated by the complete absence of any prior protection for unpaid primary producers when the processor or dealer in possession of their products makes an assignment, or against whom a receiving order is made.

A deep-felt recognition of the need for some form of correction of this situation leads these organizations to fully endorse the intent of Bill C-5, and to submit the following material in support of this endorsement.

It is contended that of the four groups, and I should indicate the 4 major groups here, involved with the processor, namely growers, banks, supply companies and labour, the grower is the only one in a completely vulnerable and untenable position.

His position is unique in that he has to overcome all the hazards of frost, drought, excessive rain, hail, wind, insect and disease damage to produce his crop in the first place. Adverse weather conditions can upset harvesting schedules leading to deterioration in the quality of the crop or congestion at the processing plants with resultant loss in marketed crop. The course of events is forcing him into growing fewer crops in larger acreages with a higher dollar input. Processors are becoming fewer in number and more demanding in terms of quality and quantity so that he tends to have only one processor customer

for all of his crop. Lack of time and facilities hampers his ability to keep abreast of the credit position of his processor.

The inherent nature of price establishment for agricultural commodities precludes the possibility of building in an additional figure to cover risks of non-payment. And finally, any of his product for which he is unpaid, delivered to a processor borrowing from the banks under Section 88, is subject to a prior claim by the bank and the grower is in the position of an unsecured creditor.

By comparison, labour is protected under legislation embodied in the Bankruptcy Act as well as in Section 88 of the Bank Act.

The banks are in the enviable position of having, by their own admission, a factor built into their rates to cover risk of non-recovery, prior rights to all inventory secured under section 88 whether paid for or not and additionally, under section 78 of the Bank Act are allowed to take subsequent security of any kind upon any other assets, real or personal, movable or immovable, of the processor. And finally, the banks risk is further reduced by spreading loans over a number of processors and other businesses outside this immediate field, and by the fact that many loans under section 88 are guaranteed by the Government under legislation such as the Farm Improvement Loans Act.

Other suppliers such as can, carton and label manufacturers or sugar refineries are in the position where only a relatively small part of their total business is done with any one food processor or even with food processors as a group.

Ontario growers produce some 12,000,000 dollars worth of fruit and 25,000,000 dollars worth of vegetables annually for processing purposes. This volume of crop is sold to fifty-odd processing companies ranging in size from the Canadian divisions of the large international firms, whose annual dollar purchases of raw material range up to more than \$4,000,000.00, down to small Canadian-owned independents packing only one crop with annual purchases of under \$50,000.00.

Credit risks are no problem with the international firms nor with most of the larger and better-established Canadian independents. However, some of the larger independents and a number of the smaller independents are a source of continual concern. Each year the marketing boards have a number of small processors teetering on the margin in that they are in arrears in their payments to growers under the board regulations.

The concern of the primary producers over this situation led to a request three years ago to the Canada Department of Agriculture for an investigation into the financial structure in the Ontario canning industry. The results of this detailed study of seven independent fruit canners was quite revealing in that it showed an average owners equity of only 18 percent of the total equity as compared to an average of 36.6 percent equity supplied by the bank. This study goes on to say:

The equity supplied by accounts payable and notes payable exceeds the total value of inventories. The commercial banks and can supply companies, at this point of time, supplied credit equal to 94 percent of the value of inventories.

And further that:

Security supplied by the processing companies for outside financing varies from firm to firm. The form of security varies from an assignment of inventories under section 88 of the Bank Act to an assignment of all assets and capital stock of the firm plus assignment of personal assets and the added personal guarantee of the owner.

The marketing boards, recognizing the vulnerable position of the grower in selling to an industry, some members of which are in the position just described, have been searching for a means to provide the grower with a fair level of protection. Two main methods have been investigated, reporting on the financial responsibility of the processor and bonding of the processor, neither have proved feasible to date.

Regarding the financial responsibility of the processor the two main sources of information, Dun and Bradstreet of Canada Limited reports and bank reports, have proved totally inadequate. Activity in this field would place an onus of liability on the marketing boards themselves in the event of a failure of a processor approved by the board, a function which they were not designed to perform and are not allowed to undertake.

The matter of bonding of processors has been investigated at some length with the Ontario farm products marketing board. Since this provincial government board, under which the grower marketing boards function, issues yearly licenses to processors, it is theoretically possible to require bonding as a condition of license. However, to date no satisfactory method of implementing such a practice has been found. In addition, the well-financed processors object to being subjected to what is, in fact, an unnecessary cost for them.

A third method of protecting the grower that has often been discussed would be to have the banks require as a condition of the loan that full payment to the grower be a first charge against the loan. In other words, if the money is loaned, among other things, to pay growers for raw produce that this be a condition of the loan. Obviously the marketing boards are powerless to effect such a requirement unilaterally but consideration might be given to a legal requirement to this effect.

With this background, we would now like to comment on Bill C-5 and its intent. At the outset we would like to express our appreciation to Mr. Whelan for his continued efforts on our behalf and associate ourselves in every way with the brief submitted earlier to this committee by Mr. Whelan.

We feel that the action of the government in forwarding this bill to this committee is an acknowledgement of the fact that there is a problem and an instruction that a serious effort be made to find a solution.

It is realized that people more qualified than ourselves in the fields of finance and credit are seriously questioning the wisdom of implementing this bill from the standpoint of its implications to our economy as a whole. We are neither qualified nor capable of debating the merits of the bill from this standpoint.

However in Bill C-5 we see the best answer yet to the problems in our particular industry. That there is a problem has been dramatically highlighted this past season by the failure of Graham Food Products Limited. A list of the growers involved in this failure is appended to illustrate the personal financial tragedies that can occur under existing conditions and legislation.

This is not an isolated incident. In November of 1949 the Niagara Canning Company and Tecumseh Custom Cannery both failed costing growers over \$137,000. In 1950 Wentworth Canning Company paid off 18¢ on the dollar on a \$133,848.00 loss to growers and later in the same year growers lost \$73,000.00 when Niagara Glen Products went bankrupt. In 1961 the F. R. Beare Canning Company went under owing growers some \$30,000 to \$40,000.

We reject the arguments of the banks that this bill will result in a substantial reduction in credit to processors on the grounds that such action cannot be justified in light of their record of satisfactory recovery in our industry. We do accept, and expect, that there will be tighter scrutiny in the extension of such credit and that some of the least creditworthy processors

may have to restrict their operations. This is necessary and may even be desirable.

Tighter scrutiny of such credit under section 88 may be desirable from another standpoint. We believe that the intent of section 88 credit is primarily to assist in processing and carrying seasonal inventory. Potentially dangerous situations arise for our growers when this credit is extended over into another season as seems to be the case whenever producers end up being unpaid for their deliveries. Perhaps the practice followed by the banks, using section 78 of the Bank Act, when difficulties are encountered, of badgering the principal into signing a mortgage or debenture pledging his physical equipment and all his possessions including his ox and his ass and his wife and his maid-servant and the unborn calf provides the banks with the added measure of security needed to justify unwarranted loans, but the grower is in no way benefited.

In summary we submit that the grower, under existing legislation, is definitely in a disadvantageous position vis-à-vis the other parties involved. We submit that Bill C-5 designed to rectify this situation is the best answer yet to our problems, and, therefore, we fully endorse its intent.

We submit that Mr. Whelan is perfectly correct when he points out that conditions have changed drastically since Section 88 of the Bank Act was originally drafted.

We submit that the wise actions of our forefathers in drafting legislation such as section 88 to meet the conditions of their day commits us to amending the legislation wisely to meet the conditions of our day.

Respectfully submitted,

The Ontario Fruit and Vegetable Growers' Association
 The Ontario Asparagus Growers' Marketing Board
 The Ontario Berry Growers' Marketing Board
 The Ontario Grape Growers' Marketing Board
 The Ontario Tender Fruit Growers' Marketing Board
 The Ontario Vegetable Growers' Marketing Board.

The CHAIRMAN: Before we proceed with the questioning, gentlemen, I wonder if we might have a motion to include Appendix "A" of the brief as an appendix to the proceedings.

Moved by Mr. Gray, seconded by Mr. Cameron (*Nanaimo-Cowichan-The Islands*).

Motion agreed to.

Mr. GRAY: May I ask the witness several questions, Mr. Chairman, arising out of his brief and also linked with some previous testimony. I wonder if you have had occasion to study the brief presented by Mr. Houlden at an earlier session?

Mr. BROWN: I have, sir.

Mr. GRAY: He made some comments that in his view bonding would be a more suitable procedure than the procedure contemplated by the bill we are studying. Do the groups you represent have any comments to make in that regard?

Mr. BROWN: I would like to refer that to Mr. Matthie of the Ontario tender fruit growers' marketing board because his board has investigated this matter more extensively than any other group appearing here this morning.

Mr. KEITH MATTHIE (*Secretary, Ontario Tender Fruit Growers' Marketing Board*): We did investigate this last spring after the Graham Food Products Limited case. We had discussions with the farm production marketing board and others, and after consideration we decided it was not a practical thing for

our board to get into. We could never be sure the bond would cover the amount involved. He might be given a licence for \$500,000 worth of produce and buy \$600,000 worth. What can he do after he has bought it to protect himself? You cannot take away the licence which he already has. We felt there was no practical way of implementing this in order to protect the board and the growers.

Mr. GRAY: Would the witnesses care to express any views in respect of Mr. Houlden's suggestion that the field warehousing approach used in the United States would be useful here?

Mr. BROWN: As we understand field warehousing in the United States, it is a form of bonded warehouse where the processor places his processed product in the warehouse and then produces a warehouse receipt to the bank for security for a loan. In Canada the loan is made under section 88 with the security given being the raw products in process. We feel that bonded warehousing would be much more restrictive and much more expensive than the present form; but it still brings no additional protection for the grower in the United States, because the security again is held entirely by the bank and not, as I believe some people have the impression, by the growers' raw products being held in bond.

Mr. GRAY: My third question is relative to the suggestion of Mr. Houlden that greater control could be given by the marketing boards over this problem.

Mr. BROWN: I have one obvious comment. So far as Ontario is concerned, there are two major processing crops that are not covered by marketing boards; that is, apples and potatoes. An approach to this problem through the marketing boards would not suffice to cover all the producers covered by our association. The other thing is that the present approach and the legislation under which our marketing boards operate would have to be changed to enable them to get into this field.

Mr. GRAY: Changed in what way?

Mr. BROWN: The prime responsibility of these boards is to arrange terms and conditions of sale. After that the particular transaction is still left within this framework to be negotiated between the processor and the grower himself.

Mr. GRAY: They have no prelicensing powers; they do not operate any prelicensing or preselling?

Mr. BROWN: No. In connection with the licensing, may I ask Mr. Fisher to answer that because our association is not directly involved.

Mr. P. A. FISHER (*Director, Ontario Tender Fruit Growers' Marketing Board*): Licensing of our processors is done by the current body, the Ontario marketing board, which is composed of a number of civil servants. They delegate certain powers to the growers' marketing boards, but they have retained the authority to license. They sometimes ask us for suggestions. We have been very grieved when they did not always accept our suggestions. We do not have the power to license.

Mr. GRAY: There is one other point arising out of my third question. Do the other provinces use marketing boards to the extent we do in Ontario?

Mr. BROWN: There is legislation in other provinces in respect of marketing boards, but they are not used as extensively in the processing field as in Ontario.

Mr. GRAY: So at the present time fewer crops are covered in other provinces than in Ontario?

Mr. BROWN: This is correct.

Mr. GELBER: From the brief I understood that suppliers are more or less captive suppliers, because they have to sell to one processor.

Mr. BROWN: This would depend on the circumstances; in some instances this would be perfectly true. A producer who is in an area where only one processing plant is located is a captive producer. The other thing you must recognize is the fact that most of the crops are contracted. In the case of vegetable crops, a contract is signed between the producer and processor perhaps prior to the seeding or planting of the crop itself. A further ramification is that if you are selling to a processor who has a section 88 loan, in effect you have committed your crop to him and to the bank as security before you have sown seed or planted the crop.

Mr. GELBER: Then even if Dun and Bradstreet or the bank give you information that the producer is financially shaky, you would have no alternative but to ship to that processor because you are a captive supplier.

Mr. BROWN: Under the terms of the contract that exists, or if you are a grower in an area with only one processor, that would be entirely true.

Mr. GELBER: Regardless of your contract, and even if the contract had a clause in it relating to financial worthiness of the processor, you would still be obliged to ship by reason of the fact that you did not have an alternative processor. Would this be correct?

Mr. BROWN: This would be correct, yes.

Mr. GELBER: So, what happens then when a processor fails? What do the people who were supplying that processor do with their subsequent crops? They must have an alternative processor.

Mr. BROWN: There are many different situations here. I would like, if I area in Ontario where a number of processors have ceased operation. He is in may, to ask Mr. Ruthven to answer this question because he comes from an a better position to give a more definite answer than I am.

Mr. E. R. RUTHVEN: (*Director, Ontario Vegetable Growers Marketing Board*): I would say that if the processor takes it into his head to do this the crop rots, that is all there is to it. There is no other protection, there is no other place you can go to to sell your crops.

Mr. GELBER: What happens to the people who are selling; they must have an alternative processor?

Mr. RUTHVEN: No, there was no other processor there the year before either. The case of Graham Foods Limited is an illustration.

Mr. GELBER: The people who were supplying Graham Foods Limited in the subsequent seasons must have found other processors.

Mr. RUTHVEN: No, the crop rotted.

Mr. MATTHIE: In the case of fruit such as peaches there is an alternative market which is the fresh market. It so happens that in fruit this was a relatively short year and the crops sold reasonably well. However, at a time of surplus it is very hard to sell it if it cannot be sold to the processor. He will have had enough from his regular growers.

Mr. GELBER: I was wondering whether this was not something of an overstatement. I would like another question answered.

Mr. BROWN: Could I make a comment with regard to your previous question? As I indicated earlier, this situation would vary depending on the area where the grower was located. You asked what a man does in subsequent years if the processor with which he had connection fails and he is no longer in existence. He has two alternatives, one is to find another processor who is within an economical distance and try to get a contract with him, or else he simply gets out of the business of growing processing crops and he has to re-organize his whole farm venture in an attempt to get into some other area of agriculture.

Mr. GELBER: I have one more question I want to ask: to what extent could the industry help itself by having cooperative credit insurance on its sales? The number of failures mentioned here is not that large in terms of the size of the industry across Canada. I should imagine premiums would not be that high.

Mr. BROWN: Again I would like to refer this question to Mr. Matthie because this has been a matter with which his board has been concerned. They have looked into the matter of bonding and this whole field has been investigated by them.

Mr. MATTHIE: I do not think it is practical; I do not think our board could get itself into a position where we would guarantee the processors' accounts, which in effect would be what we would be doing. I know we investigated that part of it and the amount of premium you would pay to get blanket coverage would have no limit because you would not know ahead of time how much would be sold. I do not think it is possible to do that under our set-up. The other suggestion was that we would pool the returns but this is not protecting yourself, it is just sharing a loss.

Mr. GELBER: But it would not be a very large share because the total of loss mentioned in all your briefs for a period of years is small compared to the size of the industry.

Mr. MATTHIE: If you have a system where you are sharing the loss, if the grower knows a certain processor is shaky he is still going to put all he can in there and it will not matter to him because someone else will share the loss.

Mr. GELBER: A co-operative would have to O.K. the sale. That would be a way to examine contracts before they are made. It is a form of self-management in terms of credit.

Mr. MATTHIE: It would be a complete change from the system we are now using.

Mr. BROWN: There is one further comment I might make here. I understand for instance that if you take out export credit insurance, one of the conditions of taking that insurance out is that the receiver in a foreign country is not informed of the fact that you have this protection. In other words, there is some concern on our part that with this kind of insurance you speak of, if the processor knew this was in existence there would be a tendency for him to be less diligent and less careful in the management of his operations because of the overriding protection that was involved.

Mr. GELBER: Surely a central credit bureau would be in a better position to judge the credit worthiness of a processor than the supplier, therefore he could advise the supplier or he could refuse the credit insurance if he thought a particular processor was too shaky.

Mr. BROWN: But we are still bound to the problem discussed by the committee earlier of establishing in a valid way the financial position of the processor concerned.

Mr. GELBER: It is a matter of judgment.

Mr. OTTO: Mr. Chairman, we have heard from both Mr. Houlden and others about the marketing board assuming more responsibility. I wonder if one of the witnesses could very briefly tell us what the marketing board does. Does the marketing board set a price for a certain produce?

Mr. FISHER: No. We have to outline to the growers at the time we want to set up a board for any of our products exactly the powers that they are delegating to this board. We then have to have a vote and in that ballot are all these powers that we are asking them to vote upon.

Our board was set up three or four years ago and 87 or 88 per cent of our 3,000 growers voted yes for the powers they specified. However, setting the price was not one of them. The price was to be set by negotiation of three growers and three processors. If that failed, there were certain arbitration proceedings which were provided. However, normally these three processors and three growers set the price. But price setting, the terms and conditions of the sale and the grade and quality, as well as the time of payment and all of the type of packages to be used, the weight that could be deducted from empty packages and the multitude of details that had been the haggling points between the growers and the processors, are all under the authority of the board. They are all set. However, the actual price is not set, it is negotiated.

Mr. OTTO: When these three processors and three producers set a price, does this price then cover the whole area?

Mr. FISHER: It covers the province of Ontario except for any area that we exempt. If there are a few peaches grown in an outlying area and they are probably not going to go to a processor, we exempt that little area. However, they cover the commercial portion of the province.

Mr. OTTO: From the other briefs presented, and Mr. Houlden's in particular, I understand that every businessman should envisage a loss and cover himself against that possibility. Do you know whether this price, as it is set when these three producers and three processors finalize their price, covers a certain percentage of possible loss to the producer?

Mr. BROWN: I think I can answer that question in this way, that when the three growers and three processors sit down to negotiate this price, all of the competitive marketing situations in the market are taken into consideration. You must realize here that in all instances you are dealing with an agricultural crop the volume of which for any given acreage is dependent on weather conditions. Therefore, in essence you are setting an average price which has to be predicated on supply and demand situations not only here in Ontario but in other provinces in the case of some crops, and certainly on the competitive situation in the United States. So that to a very large extent you are powerless to build up any additional factor for loss. You are really negotiating an average price which has to be related to the open market situation.

Mr. OTTO: I have another question. In the experience of the application of this section 88 could any one of the witnesses tell me what percentage of the cases actually go into bankruptcy?

Mr. FISHER: I am an old man now. I came home from Guelph in the spring of 1911 and took over my father's fruit farm—100 acres of fruit. In the intervening time these cases where our growers got into trouble and did not get paid have been rather intermittent. In the hungry thirties there was quite a rash of them. We came to Ottawa at that time to ask for some type of relief. We did not have many cases until 1949 and 1950 when they started again. In 1962 we had this case with Graham Foods Limited but there were at least two more that were teetering on the margin of bankruptcy. They were not complying with all the regulations that our board had set up with regard to payments. It was just a question of whether or not they went into insolvency. One of them finally got his cheques pretty well cleared up but even the government did not see fit to give them a licence for the next year, their business was so precarious.

Not only those who got into trouble worried our board but also those who were teetering on the edge as well. The growers lost at that time well over \$500,000. In the thirties we looked into all of the possibilities, the question of pooling, the question of bonding and, the question of co-operatives. We looked at it again in 1950 but we have not found the answer. We do not feel that bonding, which has been rejected by so many, is our answer. Take Graham

Foods Limited for example. For years and years they bought this quantity and in 1962 because they were in arrears and had not paid up their obligations of 1961, as a last straw they tried to get out of it by buying double the quantity. Of course, then they went broke. If we had bonded them, we would have bonded them for their normal purchases, but they gambled and bought double the quantity. Our bonds would not have been adequate. When a fellow gets into trouble he tries to get out, and we found, both in the thirties and in the fifties that there is no ready answer in bonding. It is very easy for those who are in favour of this bill to throw it back and say: bond yourselves; join or form co-operatives; or move into some of these other fields, but for 35 years growers have been trying to find an answer and we have not found one as yet. We think that something must be put in this bill so that credit is safeguarded, providing us with protection.

Mr. OTTO: Possibly I have not stated my question clearly. In many businesses insolvency occurs as a result of the secured creditor taking over the assets and there is a distribution of a part of the remainder of the assets, but the business does not go into bankruptcy because there is no one to put it into bankruptcy and no assets left. In this sphere of section 88 what percentage of failures actually wind up in a formal bankruptcy? What percentage of the producers take losses as a result of the seizure of the major portion of the assets so that there are not enough left to place the business into bankruptcy?

Mr. FISHER: I do not think I understand your question.

Mr. OTTO: I am trying to find out the percentage of failures which go into formal bankruptcy as compared to failures which go into hidden bankruptcy.

Mr. FISHER: To my knowledge and recollection there is not one instance where one of this type of failures has gone into formal bankruptcy. Normally the bank proceeds under other authority to take over and dispose of these assets, paying themselves.

Mr. OTTO: I see.

Mr. FISHER: Certainly that is what happened in respect of Graham Foods and the many other recent cases. I cannot remember exactly what happened back in the 1930's but I think the same procedure was followed and formal bankruptcy was not declared.

Mr. OTTO: On page 2 of the brief there appears the following statement:

Lack of time and facilities hampers his ability to keep abreast of the credit position of his processor.

I wonder whether one of the witnesses might elaborate on that statement, explaining in plain language what actually happens to the producer, and why he does not use the business acumen that Mr. Houlden says he should have.

Mr. BROWN: I think the point we are trying to establish here, Mr. Otto, is the fact that when the grower has a family type operation, and in many instances this is the case, where he personally is responsible for supervising and harvesting his crop, is in the process of harvesting when his entire energies and time are involved in organizing a labour crew, working against the weather. he has little time left in which to maintain a waiting-watch, if you like, on the credit position of his processor.

In addition to that point, you mentioned facilities. We were thinking of the fact that a large industry often finds it necessary to hire people skilled and qualified in the area of credit management to look after their credit interests. The small family type grower does not have either access or the ability to achieve this sort of service for himself.

Mr. MATTHIE: To add to what Dr. Brown has said, in certain areas it is sometimes difficult to sell the fruit crop and a producer cannot say to the processor that he is concerned as to that processor's finances or ask him whether

he can pay for the fruit, because the processor will tell that producer if he does not wish to sell to him he can sell his crop somewhere else. The producer might create quite a bit of bad feeling by following this course even if he had the time to do so.

Mr. OTTO: The point I was trying to outline Mr. Chairman, is the fact that the evidence we have heard so far would indicate that often several months elapse between the contract and the actual delivery of the goods. I understand that in respect of normal businesses the time lapse in this regard is very short, from perhaps ten to 30 days. Therefore, the businessman who provides the labels for cans can more or less judge his own risk, but where there is such a long time lapse, is there no facility by which the producer can judge the credit worthiness of his processor?

Mr. MATTHIE: I do not think there is any such facility.

Mr. RUTHVEN: There is no such facility of which I am aware.

Mr. MATTHIE: One can ask the bank for a report, but I have not as yet seen a bad bank report; they are always good. There is no practical way the producer can keep up to date in respect of the credit position. Financial statements are always weeks or months old when received by the producers and the situation can change materially during that time lapse.

Mr. OTTO: On page 4 in the last paragraph you state:

Regarding the financial responsibility of the processor the two main sources of information, Dun and Bradstreet of Canada Limited reports and bank reports, have proved totally inadequate.

I believe you have already answered my question in regard to banks, but in connection with Dun and Bradstreet could you just explain the statement that it has proved totally inadequate? Do you make this statement in regard to the producers only?

Mr. MATTHIE: We have received some Dun and Bradstreet reports and found out what they do say. If a company does not choose to disclose its financial operation and financial statement to Dun and Bradstreet there is no way they can force the company to divulge that information and that company must talk to people unofficially in order to find out the position. The information as a result is often very sketchy and sometimes very out of date.

Occasionally a processor who is in good shape will send his financial statement to Dun and Bradstreet, but otherwise their reports are very sketchy and the producer is no further ahead. All the producer can do is find out whether the processor is using section 88, or what judgments or assignments have been made. The producer can only judge from past occurrences and the situation may well have changed.

Mr. McLEAN (*Charlotte*): Mr. Chairman, under what marketing board would pears, tomatoes, peaches and sweet potatoes be covered?

Mr. MATTHIE: Peaches, pears, plums and cherries are covered under the tender fruit growers' marketing board.

Mr. McLEAN (*Charlotte*): Under these contracts are fruits delivered all at once, within a week, ten days, or how are they delivered?

Mr. MATTHIE: Peaches may be delivered over a six week period, and tomatoes may be delivered over a longer period than that.

Mr. McLEAN (*Charlotte*): Perhaps there could be a clause written into the contract stating that payments must be made within five days of delivery, then the onus would be on the bank under section 88, and the bank would have to advance money to the processor to pay for the fruit.

Mr. MATTHIE: That is a possibility. As growers we have always felt that payments should be more frequent, but our processor friends say that this is

impossible because they are busy and do not have time to make these daily payments. They state that this would provide an added burden. Such a procedure has never been followed. Most of our growers deliver during a period of one month to six weeks and sometimes longer.

Mr. McLEAN (*Charlotte*): In years gone by we have faced this position but have made payments every week, and upon the delivery of the raw material the bank became responsible under section 88. Why are the label, canning and sugar people not in the same position? The banks could advance the money to the processor and the processor could make payments to the producers within ten days of delivery. Why cannot this procedure be followed?

Mr. MATTHIE: We have been told this cannot be done because of this lack of facilities. It has never been done in that way.

Mr. McLEAN (*Charlotte*): Can the marketing boards insist that these contracts be drawn in such a way that payments must be made within ten or five days of delivery.

Mr. MATTHIE: It is legally possible to do that, yes, but we do not feel that it is practical.

Mr. McLEAN (*Charlotte*): If such a practice is practical in respect of one line of goods I do not see why it should not be practical in respect of another line.

Mr. MATTHIE: The largest part of the operation to which you have referred would take place over a 52 week period and perhaps the offices and facilities of the processor are set up for that period of time.

Mr. McLEAN (*Charlotte*): I have made reference to the fish business which often is carried out over a period of one month, six weeks, eight weeks and even ten weeks, but payments must be made every week to the fishermen. The bank is made responsible in this regard. This situation used to exist in respect of that industry, but we have since grown out of this position and pay the men each week. There has never been any question of a man supplying the raw material and not being paid. I feel that the banks under section 88 receiving the finished product should supply the money. The grower works all season and produces a good crop. Surely to goodness he should be paid through the facilities of a chartered bank or the Industrial Development Bank when he delivers that crop.

Mr. BROWN: Mr. Chairman, I should like to make one further general comment in addition to what Mr. Matthie has said.

One must appreciate the historical background. I think it is a fair statement that prior to the advent of marketing boards very often the grower had to wait for literally months for payments. In some instances the product would be delivered in the late summer but the producer would not be paid until late winter. This was the situation which developed in the industry. The marketing boards have been rather diligent in their efforts to correct this situation and have advanced these payment dates very considerably during the period in which they have been in operation.

I think Mr. Fisher will confirm my statement when I say there is still a major bone of contention between the grower negotiators and the processor negotiators as to the closing date for payment. This situation has been greatly improved during the years the marketing boards have been in existence, but we still face the situation where there is a period of from 30 days to six weeks between the time of delivery and payment.

Mr. McLEAN (*Charlotte*): Surely there are some processors that pay weekly?

Mr. FISHER: No.

Mr. McLEAN (*Charlotte*): Some of the larger companies must pay weekly?

Mr. FISHER: No.

Mr. MATTHIE: Most of the processors will pay on approximately September 15, and some will pay 50 per cent after delivery.

Mr. McLEAN (*Charlotte*): It seems you have a horse and buggy situation where the growers are financing the processor. This situation has been in existence for many years. I think if the industry was straightened out there would be no need for this protection.

Mr. FISHER: You are making reference to a very fundamental question, Dr. McLean, and you are perfectly right in your statement.

There are some 30 different processors, who process our fruit, with which our board deals and many of them are relatively small. If we put many of them out of business it is inevitable that the bigger ones will ultimately come back and take over this business, but there would be a time lag of a year or two while the larger processors provided the necessary facilities. The growers might well have to deliver their produce over longer distances. This change would inevitably solve the problem and a given quantity of fruit would be processed. However, if we put 15 or 20 of the smaller companies out of business next year one or two years will elapse before the change is effected and there will exist great difficulties.

The growers have financed these small processors and, as the evidence submitted by the government representatives who investigated this situation indicated, some of the processors had even less than 18 per cent of their own capital in their businesses. The growers definitely finance these processors.

This system may be completely wrong, but it is the system that has been in existence in Ontario during my lifetime. The situation is being corrected slowly. The larger companies are becoming larger and the smaller companies are becoming smaller. If we adopt your suggestion we might well effect this change more quickly. Whether that would be good or bad I am not sure.

Many of our growers feel that if we close a number of these small processors next year the processors will not only complain to our marketing boards, they will complain to the minister of agriculture. I am afraid the minister of agriculture will be quite worried about this situation.

Mr. McLEAN (*Charlotte*): The banks can be protected under section 88 and they should supply the money to the processor so the producer can be paid.

Mr. BROWN: Dr. McLean, I think there is another aspect here that should be put on record. Years ago when a processor accepted a crop it was common practice for large wholesale organizations and large retail organizations to step in at pack time and buy very substantial quantities, advancing a reasonable amount of money to these processors. This practice has gradually disappeared to the point where the processor today has become his own wholesaler. The retail organizations now step in and buy 500 cases during the pack week and 500 cases each week thereafter. In that period we have advanced grower payments and have eliminated some of the grower credit that had been in existence in the past. We have had this countervailing influence when greater stresses have been placed on the processor by the buying practices of his customers. We admit freely that the processor has a credit problem owing to these countervailing factors which have been in existence over the last 15 or 20 years.

The VICE CHAIRMAN: Dr. McLean, perhaps you might raise this interesting point with the bankers association when they appear before us so that we can get their comments.

Mr. McLEAN (*Charlotte*): I was in the banking field for approximately eight years and know something of their point of view.

The VICE CHAIRMAN: Have you any other questions, Dr. McLean?

Mr. McLEAN (*Charlotte*): No, Mr. Chairman.

Mr. FISHER: Mr. Chairman, I hope you will raise this question at the time the processors appear before you.

The VICE CHAIRMAN: Dr. McLean, perhaps you would keep that suggestion in mind.

Mr. NUGENT: Mr. Chairman, the witnesses have stated they have been looking for an answer to this problem for a long time. I do not suppose any of the witnesses here today will suggest that Bill C-5 provides the answer?

Mr. BROWN: We have looked at this matter very seriously since Bill C-5 was first made public. Our investigation has led us to believe that this is the best answer that has been presented.

Earlier in your remarks, sir, you made reference to the fact that some significance should be placed on the suggestion that we support the intent of the bill. I think this is attributable to the fact that at the time we were preparing this brief we were concerned about one point in the bill, and that is the vesting in the courts of the assets.

There was the feeling on the part of some of our member bodies that when dealing with very perishable commodities, the use of the courts would be too unwieldy in selling the produce and realizing full value. Since that time, having referred the problem to some of our legal advisers, we have come to the conclusion that this is a feasible approach, and in point of fact there are mechanics within the courts to permit rapid handling so that there is not a problem.

Mr. NUGENT: You are not suggesting that you agree with the bill rather than just its intent? Is that your evidence at this stage?

Mr. BROWN: We are not legal people, but we see in the provisions of this bill an answer to our problem.

Mr. NUGENT: You are not concerned with the other problems resulting from the adoption of this bill as you have outlined at the bottom of page 5 and the top of page 6 of your brief? You state as follows:

It is realized that people far more qualified than ourselves in the fields of finance and credit are seriously questioning the wisdom of implementing this bill from the standpoint of its implications to our economy as a whole. We are neither qualified nor capable of debating the merits of the bill from this standpoint.

Mr. Chairman, the witnesses have very clearly put this caveat in their brief. You say this bill protects you, but you are being very careful to state to this committee that you realize it may cause very serious complications. Are you now suggesting that you are not interested in those complications?

Mr. BROWN: We are not suggesting that the adoption of this bill would cause serious complications, we are merely noting the fact that other people have said this.

Our responsibility is to the organizations which we represent, and we are here today to speak on their behalf. We are prepared to present ourselves to this committee as expert witnesses in the particular fields we are charged to represent. This is the point which we wish to put across at this time.

Mr. NUGENT: Mr. Chairman, surely this witness is not telling me that the complications to our economy as a whole are none of his business? How the adoption of this bill affects your industry and how it affects the economy of the nation as a whole must all be part of the balance of questions and answers you must face.

Mr. BROWN: Yes, and we have indicated that we recognize that the adoption of this bill will lead to tighter scrutiny of credit and may affect some of

the less worthy credit processors of our industry, but we are prepared to accept the fact that this will happen.

Mr. NUGENT: The fact that this bill will wipe out secured creditors and give you precedence over secured creditors would be good, is that your idea?

Mr. BROWN: We feel that because of the position in which growers find themselves this is the only way that the inequity which seems to have been generally accepted by the committee and by those people who have appeared before this committee can be corrected.

Mr. NUGENT: There seems to be the tendency of people to refer to the position in which the grower finds himself, and that no matter what the position of the processor, the grower has to deliver his product to that processor. We have heard the suggestion made, that even though the grower knows he will not be paid, he must deliver to the processor. Are you suggesting that this situation has developed to that point? Do the growers have any influence in regard to the contracts made with the processors?

Mr. BROWN: I am not clear on the intent of your question.

Mr. NUGENT: The delivery of your products to the producer is handled by the contract made by your marketing boards, is that correct?

Mr. BROWN: That is correct.

Mr. NUGENT: Surely the grower has some influence on the marketing boards so that the marketing boards will provide some protection in these contracts to the producer?

Mr. BROWN: In respect of those crops handled by our own marketing boards, that is correct.

Mr. NUGENT: Is the witness suggesting that the producer must deliver his crop to a processor whether the processor can pay for that crop or not?

Mr. BROWN: In connection with the detailed aspects of these contracts, I will have to refer your question to one of our marketing board witnesses.

Mr. MATTHIE: Under our regulations we say, for the protection of the grower—which, of course, is in the field of tender fruit—there must be a contract between the processor and the grower. Under the Bank Act, I believe as soon as the contract is written the processor may go to the bank and say that he has purchased so much goods and needs so much money to process them. He in effect gives the grower's product as security to the loan. In this case the grower having signed the contract would have to fill the contract even though later on he knew that the processor might not be able to pay him.

Mr. NUGENT: When he signed the contract he has a condition in that contract to the effect that the grower has to pay him so much. That is something which you people have within your power to negotiate each year.

Mr. MATTHIE: We do negotiate prices; we set the terms of the contract and its implications.

Mr. NUGENT: Including the price and the time of payment.

Mr. MATTHIE: That is in a separate set of regulations and is not under the contract itself; but it does apply. Even though a contract was in existence and did specify a certain payment date, there is always a few days between delivery and payment, and anything can happen in the interval. In the case of Graham Food Products Limited, they missed the peach payment date of November 15, and declared the assignment on November 27. The Keiffer pear payment was due on December 1. You can see in the period when this took place very much happened.

Mr. NUGENT: There is some element of this in very business. Is that correct?

Mr. MATTHIE: Yes.

Mr. NUGENT: I have roughly calculated the amounts you have set out in your brief. You set these out from 1949 to 1961. I would gather that the Graham Food Products are in addition to these, and it would come to less than \$500,000 in that 12-year period. Is that correct?

Mr. MATTHIE: This is just for the sphere of operation of the tender fruit growers' marketing board. This has happened in respect of other products. We are just speaking of a small section of the industry.

Mr. NUGENT: This brief is on behalf of the six boards whose representatives appear before us?

Mr. MATTHIE: Yes.

Mr. NUGENT: Do you have any idea of the total amount of sales in that period by all these people?

Mr. MATTHIE: The Ontario tender fruit growers' marketing board, for which I work, has annual sales of between \$4 and \$6 million. I do not know what the total would be.

Mr. BROWN: The sales of fruit and vegetable crops in Ontario to processors currently run in the order, as we have indicated in the brief, of about \$12 million annually in respect of fruit, and \$25 million in respect of vegetables annually. This would be an average figure reported by the Ontario department of agriculture statistics.

Mr. NUGENT: My rapid calculation would indicate that the losses you have listed amount to one-tenth of one per cent of the annual sale. Is this the problem you have now brought before us which you say is distressing to people; is this the insignificant reason why we should perhaps disregard the serious effect on the rest of the country?

Mr. MATTHIE: If this is insignificant to us, it would also be insignificant to the banks.

Mr. NUGENT: I would like to get the amount of the loss to these people in proportion to the sales over that period you have mentioned. Is the figure I have mentioned not the approximate percentage?

Mr. BROWN: You are now speaking of averages. Our case is built around the personal losses which individual growers have incurred. We feel that would be applicable because of the vulnerable position the grower is in. I believe that the Federation of Agriculture made reference to our friend, Mr. Tingen. This is the sort of direct personal loss which can be compared to the present situation. This man probably is financially crippled now as a result of the loss he sustained last year. It is literally the work of a lifetime wiped out.

Mr. NUGENT: I just wanted to make sure that we get this in perspective. I am sure all of us have a great deal of sympathy for a small man who has to take a loss on his own. Bearing in mind the many others involved in the industry as well as the producers and the country as a whole, is not the problem how this terrible burden, which occasionally falls on one small man, can best be spread out and absorbed by all of us. Is that not the problem we are facing?

Mr. BROWN: Yes.

Mr. NUGENT: That is why I thought I would bring up the question of the total sales. Certainly in respect of the principle of insurance, if, as I have indicated the total loss is only one per cent, then certainly it is well within the financial possibility that your associations could set up a fund of one half of one per cent, or one per cent of sales which would cover this without disturbing the economy of most of the country and quickly build an insurance pool which would take care of most of this sort of thing. There is no need for complicated legislation and unnecessary restrictive rules which would unnecessarily disturb

consumer credit and all the rest of it. Am I overlooking something? Is there some reason why a simple levy like that would not take care of it?

Mr. BROWN: It becomes a question of the approach you use. The approach you have suggested may be possible. We already have indicated, however, the fact that we believe that if this protection is known to the processor and the people granting him credit, there would be even less scrutiny of this credit than there is now.

The point you have made concerning the small percentage of loss involved here leads us to believe that the provisions of Bill C-5 will not have the ramifications suggested by other witnesses; certainly not in our industry, and some slight additional scrutiny of the credit on the part of the banks in particular would in itself alleviate the problem, I am told by processors I have spoken to that the credit granted under section 88 is not closely supervised by the banks. I am told, for instance, by one processor that he has not had a check of his inventory by a bank in the last two years.

Mr. NUGENT: Surely, although the witness says that since the percentage is so small it would not have the repercussions suggested, the repercussions of the bill would be on all credit granted; not on that insignificant amount of losses, but on the hundreds of millions of dollars of credit given by banks and other people. No one wants to take a loss. The insurance fund set up could pay a percentage of the loss—half or three-quarters—and this in itself would adequately guard against the lax attitude which you mentioned, would it not?

Mr. BROWN: When you speak in terms of affecting credit, I think we have to realize what Bill C-5 is asking. There is for example \$100,000 worth of processed fruit and vegetables currently in the hands of a processor which has been given as security, and the first thing we have to recognize is that Bill C-5 would only affect—so far as the producer is concerned—roughly 25 per cent of that which would be grown; it would only represent the unpaid portion of that. Since the processor is making some payments as he goes along, it is going to be in the order of something considerably less than 25 per cent; so that even in an individual case we are talking about perhaps 10 or 15 per cent. When you prorate this against the whole industry, it becomes a very small amount. It is for this reason we cannot see that the total credit would justifiably be reduced by the provisions of Bill C-5.

Mr. NUGENT: Obviously the witness has his tongue in his cheek because at the time that securities are taken for long term loans, and so on—no matter whether given by banks or anyone else—the cover of inventory as compared to fixed assets, accounts payable, and so on, may vary very widely, even wildly during the year. It is at the time of giving the credit that these things are taken into account, and if one factor, such as the inventory, may be totally exempt from this security provision—and this may vary anywhere from 10 per cent to 60 per cent—you cannot be serious in suggesting this will not seriously hamper any consideration given credit.

The VICE CHAIRMAN: Mr. Nugent, I do not wish to attempt to limit the committee in any way. However, I think you have perhaps gone beyond the scope of the testimony of these witnesses. I believe they are here to indicate the ramifications to their industry. Subject to correction, I feel that perhaps the broader implications of the bill as it relates to credit and so on might be pursued when the bankers are before us and perhaps the processors. I feel you are going a little beyond the scope of the bill which we are considering here.

Mr. NUGENT: I agree, and I will drop it.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): The persons representing the majority of the associations of primary producers in Ontario have shown us certain important figures involving some bankruptcies, notably the Graham Food Products Limited, the Niagara Canning Company, and other bankruptcies which occurred in Ontario. These figures indicate that the primary producers would have lost large amounts. I wonder if the witnesses could give us the approximate amount of the losses of the primary producers in relation to the losses of the suppliers.

(*Text*)

Mr. MATTHIE: This would be very difficult to answer. I think the suppliers' losses would be greatly in excess of what the growers' loss is as a total. As we have stated before, the producers' equity is on an average of 25 per cent, and the can companies, the sugar companies, and other people, certainly add a great deal more to that.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Could you tell us when these bankruptcies occur whether or not the banks have considerable losses? Do these losses represent a considerable amount relative to that of the producers?

(*Text*)

Mr. MATTHIE: Well, if the growers cannot get any money, we assume there are not enough assets to cover the liabilities. In certain of these cases we have mentioned, the banks did lose; but there is the one case on record where the banks were paid in full and only a small amount left for the growers. I am not familiar with all these things that happened before I came to the board, and it is hard for me to give you a definite answer on that.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Therefore in certain cases the banks' losses were practically nil, but the producer himself would have losses which would represent the result of his work for a whole year. Is this the case?

(*Text*)

Mr. BROWN: I think this is precisely the case. As Mr. Matthie indicated, we do not have with us the figures to enable us to supply the information you ask. Our records in the association indicate the losses our growers have had in a number of cases. We do not have a record of the losses sustained by the other creditors or by the banks. It is my understanding that only in the Graham Food Products case has there been a substantial loss by the bank. In the other cases the banks' losses were either non-existent or negligible.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): You recognize, as I do, that it is probably easier to create bank credit, as has already been explained by Mr. Graham Towers, the ex governor of the Bank of Canada, than to bring out an apple from the soil. To bring out an apple from the soil represents more work than to create bank credit.

(*Text*)

Mr. BROWN: I am not sure I am in a position to answer that question. I know the amount of effort involved in growing the apple. I am not completely familiar with the amount of effort involved in respect of credit.

Mr. MATTHIE: Sometimes when you go to a bank you know how difficult it is to create the credit.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Is it possible that the banks are afraid of Bill C-5 which would protect the producers because they in fact have a privilege of giving

credit? Great economists have recognized that. I presume you will recognize that in a case like this it is the primary producers who must be protected first of all.

(Text)

Mr. WHELAN: I only have a couple of questions to ask. Did you every try to find out, by seeking outside help, if a processor was in a good financial position, and what procedure did you follow and what answers did you receive?

Mr. MATTHIE: The only method under our present system is to ask for a bank credit report. Other than this we would only have word of mouth or rumour which is just as effective in determining the credit worthiness of the processor, because the bank credit report has definite limitations. It is not possible to get anything that is 100 per cent foolproof. You always have an element of risk. For instance, the financial statement made up quarterly or even annually is greatly out of date by the time you get it.

Mr. WHELAN: There is one other question I would like to ask. Mr. McLean brought up this discussion as he is familiar with the processing companies. They operate only in short periods of time, two or three months a year. Maybe some of the secretaries on the board may correct me but this would involve an extra cost for the processing companies. As far as I am concerned I would like to say that Bill C-5 has not put any of these companies out of business, as some people intimated. I think it would cost these companies exorbitant amounts to pay a staff to do all this figuring, and it would have to have very good staff, not just part time students. They would have to be familiar with the whole operation of the company. Is that not right?

Mr. MATTHIE: This is one of the main objections that the processors had in discussing the question, the extra work that would be involved in making extra financial statements. The amount of bond itself, if it were granted, would cost roughly \$10 per \$1000. A company doing a million dollars worth of business would have a bond expense of an extra \$10,000.

Mr. WHELAN: Can you explain how this works? How does the pay-off on these bonds work; is it paid immediately?

Mr. MATTHIE: It can be reduced as the indebtedness is paid, and the cost would be below that.

Mr. WHELAN: It was intimated here that all our crops handled in Ontario and in the whole of Canada are contracted. I would think this is very far from fact. A lot of the crops processed in Ontario and in the rest of Canada have no written contract. Is that correct?

Mr. BROWN: This is correct. The marketing board is not all-embracing, and where there are no marketing boards there may be a contract, but the contract is not supervised by any outside body; it is simply a contract between the individual grower and his processing company. In this instance the grower is in a very disadvantageous position in negotiating the contract to his interest as far as the terms of payment are concerned.

Mr. WHELAN: I have another point to make on bank losses. It has been implied here that one-tenth of one per cent, or whatever it would be, is an insignificant figure and we should not pay attention to it because the loss is so small to this industry. Would it not be your opinion that one-hundredth of one per cent of the loss to the banks is less significant to the bank in this operation?

Mr. BROWN: This is precisely the point we are attempting to make, that the burden for these losses falls with undue weight on individual growers. The grower has little chance to spread his loss; whereas the other people have both the opportunity to build in a factor for loss and to spread the risk.

The CHAIRMAN: I would like to say that we have to finish before eleven o'clock.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Dr. Brown, on page 5 of your brief you make mention of the possibility of an amendment to the Bank Act. I was wondering if you could tell us whether your organization made any investigation in this regard? Is the implied proposal here much the same as the one that was brought before the committee about 10 years ago to cope with the same problem?

Mr. BROWN: You are referring to this third method of protecting the grower? This has been discussed internally among our own organizations. The feeling behind this is that if this credit is extended for the purposes of paying the grower or for the purposes of paying other people, that perhaps the loan itself could be made conditional to these purposes being fulfilled. We feel that there are instances elsewhere in the financial field where if you borrow money for a specific purpose the bank does see to it that the money is used for this purpose. The difficulty that we have seen here is that there is no way in which the grower groups can unilaterally impose this situation. We merely included this in our brief to indicate that we have been continually concerned with this problem and that we have been searching for an answer. This is one of the possible answers that has been under consideration by our groups.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): If it did prove possible, would you think this would be preferable to Bill C-5, or do you still think Bill C-5 is a better method of doing it?

Mr. BROWN: I am not sure that we have given this whole matter enough thought to make it possible for me to answer this question specifically here today. In a general way I would have to say that any method that redresses our grievances is satisfactory to us, but we have not considered this in detail and I do not think I am in a position to give you an answer at the moment.

Mr. FISHER: May I add a comment to that? It is a very fundamental question. Our bankers, as well as some other people, have said "Why don't you go and bond yourself" or "Why don't you make a better investigation of the security of these people you deal with". Mr. Nugent asks, why do we not set up a fund to protect ourselves, and several other suggestions have been made, that we have been negligent in not looking into them and using them instead of coming down here to ask that Bill C-5 be made the means of correcting this problem. The question that has been brought up by Mr. Cameron has been discussed by us on many occasions. Now, we do not know exactly the terms of reference of this committee. There is a problem here and this is a suggested means of correcting it. Whether this committee can make alternative suggestions as to means of correcting it in the particular bill that is in front of us or not I do not know. I hope they can.

If Bill C-5 is not complete and adequate, I hope you can amend it to make it so. However, we have looked into all of these things and I am very much interested in what Dr. McLean said. I sit on one of these boards, and I have sat on it for many years. This matter has been before us periodically for at least 20 years. We have stepped up the date of payment since we became boards, but we have not stepped it up to a weekly payment. I am going to be very interested when you ask the processors, when they are here a week from now, what they think of that because it might be that that is part of our answer. There is no doubt that if this money that is lent to process a seasonal crop, whether it is fish or logs or fruit, were used to pay the processor, there would be no problem. It is only when it is not so used that there is a problem.

Now, we, like the others, have suggested other means if this is not adequate. We have been told: "Go home and bond yourself or insure yourself". It is very

easy to use those words and to tell us to go home and get 3,000 growers organized to do this. We just cannot do it. However, you brought up a question that we have discussed many times. We have a lot of faith that that might be part of the answer.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I just wanted to find out how much investigation has gone into this.

Mr. WHELAN: I wanted to make one comment in reference to what was said at the start of the meeting. It has been intimated that Bill C-5 did not have a chance to pass this committee to become law. I would like to state at this time that I have done a lot of research and have had financial and legal advice on this. I have evidence to prove that it will not contaminate or eliminate credit and that it can be made law without infringing on provincial rights.

The CHAIRMAN: We will now adjourn to November 22nd.

APPENDIX A

LIST OF GROWER AND DEALER CREDITORS OF GRAHAM FOOD PRODUCTS LTD.

Name	Amount Owing	Product
British Fruit Co.	\$ 2,275.50	Keiffer Pears
Fred Culp & Son	2,305.38	Keiffer Pears
N. H. Culp & Son	2,716.47	Keiffer Pears
A. W. Smith	4,674.21	Keiffer Pears
F. Winoski	249.75	Keiffer Pears
J. Archer	2,111.41	Tomatoes
E. Majewski	511.57	Tomatoes
J. Mecking	1,856.91	Tomatoes
E. Ruthven & M. Simpson	455.09	Tomatoes
S. Williams	174.60	Tomatoes
Fred Culp & Son	716.92	Bartlett Pears
Lawrence Austin	806.61	Keiffer Pears
John Benedict	202.80	Keiffer Pears
Stan Benedict	95.60	Keiffer Pears
Joe Boley	265.15	Keiffer Pears
Broadwood Orchards	2,279.74	Keiffer Pears
Ross Bruner	462.45	Keiffer Pears
Keith Buchanan	45.12	Keiffer Pears
R. S. Cartwright	450.00	Keiffer Pears
Armand DeClerk	965.12	Keiffer Pears
Maurice & Hector Delanghe	473.28	Keiffer Pears
C. A. Dewhirst	307.80	Keiffer Pears
Andy Ellenberger	43.40	Keiffer Pears
Fox & Neal	1,962.26	Keiffer Pears
Abe Heinricks	131.17	Keiffer Pears
Archie Ransom	32.88	Keiffer Pears
Gladstone Smith & Son	747.64	Keiffer Pears
Thompson Bros.	2,303.80	Keiffer Pears
Gerry Veens	4,212.15	Keiffer Pears
Cyril Vervait	1,087.66	Keiffer Pears
A. G. Wigle	10.27	Keiffer Pears
Charles Butler	934.13	Peaches
R. S. Cartwright	348.82	Peaches
John Dubas	1,922.03	Peaches
Eastman Fruit Farm	608.71	Peaches
Ellenberger Bros.	709.07	Peaches
Harrow Potato Growers Co-op ..	34.53	Peaches
Frank Huffman	619.43	Peaches
Grace Mallard	4,816.39	Peaches
James H. Murray	935.11	Peaches
McGuigan's Orchards	1,063.66	Peaches
J. D. Tingen	13,616.84	Peaches

STANDING COMMITTEE

LIST OF GROWER AND DEALER CREDITORS OF GRAHAM FOOD
PRODUCTS LTD. (Continued)

Name	Amount Owing	Product
Peter Welackey	2,472.29	Peaches
Hartley Wright	2,801.50	Peaches
Grimsby Fruit Co-op	2,592.40	Keiffer Pears
Jordan Fruit & Supply	220.00	Keiffer Pears
Nort Strong	13,240.98	Keiffer Pears
Jordan Fruit & Supply	734.81	Peaches
Nort Strong	3,814.04	Peaches
Vineland Growers Co-op	4,069.94	Peaches
Duer Produce Farms Inc.	2,432.40	Sweet Potatoes
Grimsby Fruit Co-op	3,715.51	Bartlett Pears
Jordan Fruit & Supply	588.40	Bartlett Pears
Southward Fruit	648.30	Bartlett Pears
Nort Strong	3,309.59	Bartlett Pears
Vineland Growers Co-op	2,662.24	Bartlett Pears
Nort Strong	4,267.32	Peaches
Vineland Growers Co-op	2,395.74	Peaches



(HOUSE OF COMMONS

First session—Twenty-sixth Parliament)

1963

STANDING COMMITTEE

ON

NADA, **BANKING AND COMMERCE**,

(*Chairman:* EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

(FRIDAY, NOVEMBER 22, 1963

FRIDAY, NOVEMBER 29, 1963)

Respecting

(Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing))

WITNESS

(Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,	Grafftey,	Nesbitt,
Aiken,	Gray,	Nowlan,
Armstrong,	Grégoire,	Nugent,
Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Basford,	Hamilton,	Pascoe,
Bell,	Irvine,	Pilon,
Boulanger,	Jewett (<i>Miss</i>),	Ryan,
Cameron (<i>Nanaimo-</i>	Kelly,	Rynard,
<i>Cowichan-The Islands</i>)	Kindt,	Sauvé,
Chaplin,	Klein,	Scott,
Chrétien,	Lloyd,	Skoreyko,
Côté (<i>Chicoutimi</i>),	Macaluso,	Tardif,
Douglas,	McLean (<i>Charlotte</i>),	Thomas,
Flemming (<i>Victoria-</i>	Monteith,	Thompson,
<i>Carleton</i>),	More,	Vincent,
Gelber,	Morison,	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, November 22, 1963.

(15)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day. In the absence of the Chairman, the Vice-Chairman, Mr. M. J. Moreau, presided.

Members present: Messrs. Aiken, Bell, Flemming (*Victoria-Carleton*), Gelber, Kindt, Moreau, More, Nugent, Rynard, Skoreyko, Vincent, Whelan—(12).

In attendance: Mr. S. C. Barry, Deputy Minister of Agriculture and Mr. L. C. Rayner, Economics Division, Department of Agriculture.

The Committee, in accordance with its orders of the day, first dealt with three private bills, in respect of which verbatim evidence was not recorded.

The Committee then resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

Mr. Nugent moved, seconded by Mr. Skoreyko, that the Chairman do now leave the Chair. He stated that this motion is not debatable and has the effect of killing the Bill.

The Vice-Chairman thereupon put the motion, which was resolved in the affirmative on the following division: Yeas, 8; Nays, 2.

The Committee thereupon adjourned to the call of the Chair.

FRIDAY, November 29, 1963.

(16)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Basford, Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Flemming (*Victoria-Carleton*), Gelber, Gray, Habel, Irvine, Jewett (Miss), Klein, McLean (*Charlotte*), Moreau, More, Morison, Nugent, Olson, Pascoe, Ryan, Scott, Tardif, Thomas, Vincent, Whelan—(28).

In attendance: Dr. P. M. Ollivier, Parliamentary Counsel.

The Chairman stated that the Sub-Committee on Agenda and Procedure met on Tuesday, November 26th, at the call of the Chair, in order to discuss the course to be followed as a result of the resolution passed at the Committee's meeting on Friday, November 22, that "the Chairman do now leave the Chair."

While the Chairman was reading the report of the Sub-Committee, Mr. Nugent rose on a point of order, and stated that he did not feel that it was necessary to read the full report of the sub-committee, giving the citations which were quoted at that meeting, as the same citations would undoubtedly be quoted again at today's meeting. He requested that the Chairman read only the recommendation of the Sub-Committee.

The Chairman therefore read the recommendation of the Sub-Committee on Agenda and Procedure, which is as follows:

That this Sub-Committee report to the Banking and Commerce Committee that its action last Friday is, in the opinion of this Sub-Committee, contrary to the rules; the Sub-Committee recommends that the matter be referred to the Banking and Commerce Committee for guidance.

After discussion, the Chairman read the full text of the report of the Sub-Committee. (*See "Evidence".*)

It was moved by Mr. Gray and seconded by Mr. Basford that:

- (1) this Committee supports the opinion of the Sub-Committee on Agenda and Procedure that the action of this Committee on Friday, November 22, was contrary to the rules;
- (2) this Committee should forthwith resume its examination of and enquiry into Bill C-5 in order that the Committee may report its observations and opinions thereon to the House of Commons in obedience to the Order of Reference of the said House dated June 27, 1963.

During discussion on the motion, the Chairman introduced Dr. Ollivier, who made a statement quoting citations from Beauchesne, 4th Edition: Bourinot, 4th Edition; and May's Parliamentary Practice, 16th Edition. He also cited a somewhat similar situation in the Senate Committee on Banking and Commerce in 1960-61. Dr. Ollivier was questioned at length by the members.

After further discussion, the Chairman put the question on the motion of Messrs. Basford and Gray, and the motion was carried on the following division: Yeas, 17; Nays, 5.

It was then moved by Mr. Aiken, seconded by Mr. Nugent that:

This Committee report to the House that the Bill be not further proceeded with.

With the Committee's permission, the Chairman reserved decision on this motion.

The Chairman said that the Canadian Food Processors Association, who were to have appeared as witnesses at today's meeting, had filed copies of their brief with the Clerk.

On motion of Mr. Moreau, seconded by Mr. Ryan,

Resolved,—That the text of the submission of the Canadian Food Processors be printed as an Appendix to the Minutes of Proceedings and Evidence. (*See Appendix "A"*).

The decision as to whether representatives of the Canadian Food Processors Association should be asked to appear to be questioned on their brief was referred to the Sub-Committee on Agenda and Procedure for recommendation. The question of the appearance of other witnesses who had been invited and had not yet appeared was also referred to the Sub-Committee for recommendation.

At 11:00 a.m., on motion of Mr. Olson, seconded by Mr. Klein, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 22, 1963.

The VICE-CHAIRMAN: Gentlemen, at this time we will resume consideration of Bill C-5, an act to amend the Bankruptcy Act.

This morning we have Mr. S. C. Barry, the deputy minister of agriculture, as a witness. However, I understand Mr. Barry will not be here until 9:30.

As Mr. Nugent raised a point earlier perhaps we could hear what he has to say at this time.

Mr. NUGENT: It is a very simple point, Mr. Chairman.

I move, seconded by Mr. Skoreyko, that the Chairman do now leave the chair. That is an undebatable motion, and it has the effect of killing the bill.

The VICE-CHAIRMAN: Perhaps you would explain the purpose, Mr. Nugent, or is that asking too much?

Mr. NUGENT: I will, provided it will not be considered as debate.

As I say, this is an undebatable motion. Certainly the Chairman's own remarks last week indicated—and I will refresh your memory on this—that the purpose of this meeting is to consider C-5. I indicated last week I thought it was already obvious that this bill should not be passed as it was too broad in scope and causes more harm than good. While there may be some case for trying to protect these people, the Chairman's own remarks were to the effect the testimony will be of some value, whatever we do with the bill, in view of the fact it will be on the record and would be helpful in arriving at a suitable solution to the problem which the bill indicates exists. Mr. Chairman, that is the reason we have had the number of meetings we have. The reason we have had meetings is to consider Bill C-5. We are not a commission investigating this matter. I thought the debate in private members' hour was more time consuming than this bill was entitled to on its own virtues, and I would ask the Chair to dispose of this now.

The VICE-CHAIRMAN: We have no choice but to consider Mr. Nugent's question.

Mr. WHELAN: Mr. Chairman, I may be ignorant of parliamentary procedure. You will note that a good many members who are here this morning have not attended previously. This seems to me to be a plan to kill this bill regardless of what anyone says. Even Mr. Nugent has attended only three times at these meetings.

Mr. MORE: You are not entitled to direct criticism to a member's absence.

The VICE-CHAIRMAN: This is not a debatable motion, as Mr. Nugent has indicated. However, the bill can be revived by order of the house and the proceedings could then be resumed at the point they were interrupted.

Mr. AIKEN: You could hardly call it a conspiracy at 9:25 a.m. when the meeting is called for 9 a.m., unless the government has taken all its members off.

Mr. WHELAN: This is an injustice if there ever was one.

The VICE-CHAIRMAN: The motion is that the Chairman now leave the chair. All in favour? All opposed?

Motion agreed to.

FRIDAY, November 29, 1967.

9.10 a.m.

The CHAIRMAN: Gentlemen, I see a quorum. I now call the meeting to order. May I first state that I am very pleased to see so many of you here this morning at such an early hour. I have a report to make from the subcommittee on agenda and procedure to the standing committee on banking and commerce.

Your subcommittee on agenda and procedure met on Tuesday, November 26, at the call of the Chair, in order to discuss the course that is to be followed as a result of the resolution passed at the committee's meeting on Friday last, November 22, that "the Chairman do now leave the chair."

Dr. Ollivier, parliamentary counsel, was invited to be present to advise the subcommittee.

In support of his views, Mr. Nugent quoted Beauchesne's 4th edition, citation 412, which reads—

Mr. NUGENT: I think it is rather improper to repeat to this committee now the basic arguments given in the steering committee. So far as this committee is concerned, there is no business before us until the Chairman can give us a reason for it. I suggest the resolution from the steering committee calling us together is all that is required.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that the committee be resumed.

Mr. GRAY: I move, seconded by Mr. Basford, that this committee support the committee on agenda and procedure.

The CHAIRMAN: Mr. Nugent has raised a point of order. Does anybody wish to speak to it?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move, and I would point this out to start with, that the committee's proceedings on Bill C-5 were illegally interrupted, and that they should be resumed immediately this morning.

The CHAIRMAN: I think probably as far as the point of order is concerned, that the meeting of the committee on agenda and procedure and of this committee had been left to the call of the Chair. The purpose of this morning's meeting is to report to you on the last steering committee meeting, and that is what I am in the process of doing. The steering committee has a recommendation to make. If the committee prefers, I am prepared to read the recommendation first, and then to read the report of the meeting. I think actually it does not make an awful lot of difference. So with your permission I will continue in that order. I was going to do it, but if the committee prefers, I could read the recommendations that the steering committee has made.

Mr. NUGENT: We are still debating a point of order. Mr. Cameron could not be more out of order than in opposing the motion. I have never before heard of a chairman of a steering committee bringing in and reading a report. Usually you take some action because of a recommendation of the steering committee. All that is necessary here, I think, since there is no business before this committee—because we have disposed of the business at this time—is to indicate that the steering committee passed a motion, and I think this should be before us, before we have anything to talk about.

The CHAIRMAN: Your point may be well taken.

Mr. GRAY: I want to dispute Mr. Nugent's comment that we have no business before us. I do not think we should let it passed unnoticed.

The CHAIRMAN: I think this is the whole crux of the question, and I think that was the point Mr. Cameron was making.

Mr. GRAY: On a point of order, if we have an opportunity to hear Dr. Ollivier in due course, I have no objection to your reading the basic report or recommendation of the committee.

The CHAIRMAN: I think it might be simpler, with your permission, if I read the report or recommendation of the steering committee, and then I can give you the reasons why the steering committee did this.

After considerable discussion, your subcommittee passed the following resolution, on division:

That this subcommittee report to the banking and commerce committee that its action last Friday is, in the opinion of this subcommittee, contrary to the rules; the subcommittee recommends that the matter be referred to the banking and commerce committee for guidance.

The matter is therefore returned to this committee for decision.

I shall now go back to where I was at the beginning. This is the matter being discussed at the present time.

Mr. MOREAU: What about the recommendation of the subcommittee? I move that it be adopted.

The CHAIRMAN: I think we had better finish the whole report. In support of his views, Mr. Nugent quoted Beauchesne, 4th edition, page 412, which reads:

The proceedings of a committee on a bill may be brought abruptly to a close by an order: "That the Chairman do now leave the Chair" or by a proof that a quorum is not present. The Chairman, in such cases, being without instruction from the committee, makes no report to the house. A bill disposed of in this manner disappears from the order paper, though it can be revived by an order of the house.

Dr. Ollivier is present today, and he pointed out:

... that this citation from Beauchesne was from a chapter dealing with proceedings in committee of the whole;

On being asked to comment on the action of the committee, Dr. Ollivier stated that

... he was of the opinion that it was applicable only in committee of the whole.

The motion was out of order because the committee has an obligation to report to the house on a bill referred to it. He supported his view with the following citations;

May's Parliamentary Practice, 16th edition, page 655, under the heading: "Reporting of bills to the house before their consideration has been concluded":

It is the duty of standing committees, as of all committees, to give the matters referred to them due and sufficient consideration. Accordingly, the chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.

Bourinot's Parliamentary Procedure, 4th edition, page 520.

Mr. NUGENT: Mr. Chairman, since we have Dr. Ollivier with us this morning, it is likely that someone will ask him to give some of these rulings or quotations, and it might save the time of the committee just to dispense with

the reading of what he gave us previously, because he will be repeating it here anyway, together with possibly some new ones.

The CHAIRMAN: Thank you. But I think you raised this on a point of order:

Bourinot's Parliamentary Procedure, 4th edition, page 520, reads;

Every committee on a public bill is bound to report thereon. The house alone has power to prevent its passage or to order its withdrawal. Beauchesne, 4th edition, citation 506:

Every bill referred to the committee must be reported
and

It is the duty of every committee to report to the House the bill that has been committed to them.

These were the reasons your steering committee or subcommittee made the report which I read to you a few moments ago.

Mr. GRAY: I move, seconded by Mr. Basford, (1) that this committee supports the opinion of the subcommittee on agenda and procedure, that the motion of this committee on Friday, November 22, was contrary to the rules; (2) that this committee should forthwith resume its examination of and inquiry in connection with Bill C-5, in order that the committee may report its observations and opinions thereon to the House of Commons in obedience to the order of the House of Commons dated June 27, 1963. I submit this in writing, pursuant to the practice.

The CHAIRMAN: Is there a seconder?

Mr. BASFORD: I second the motion.

The CHAIRMAN: It has been moved by Mr. Gray and seconded by Mr. Basford:

that this committee: (1) supports the opinion of the subcommittee on agenda and procedure that the action of this committee on Friday, November 22, was contrary to the rules; (2) that this committee should forthwith resume its examination of and inquiry into Bill C-5 in order that the committee may report its observations and opinions thereon to the House of Commons in obedience to the order of reference of the said House dated June 27, 1963.

You have heard the motion.

Mr. GRAY: I think ordinarily I am entitled to speak on the matter at this point. However I see we have parliamentary counsel with us. It is just that I would not want to lose my right to speak, for I would ordinarily speak pursuant to the motion at this point. However, I am prepared in view of the interest in Dr. Ollivier's comments, to defer to him.

The CHAIRMAN: Would it meet with the wishes of the committee to hear what Dr. Ollivier has to say, as a legal opinion?

Mr. BOULANGER: On a question of privilege, I am sorry to see that we do not have the interpretation system working today. As far as I am concerned, I excuse you for not being able to follow a previous motion that we should at all times have the services of simultaneous translation or interpretation. I just want to mention it so that you will be aware of the fact that we do not have the services of an interpreter or a translator this morning.

The CHAIRMAN: I am informed, Mr. Boulanger, that there is an interpreter present.

Mr. BOULANGER: That should cover it.

The CHAIRMAN: It covers both of us, shall we say. Would it be the wish of the committee to hear Dr. Ollivier first?

Mr. NUGENT: Dr. Ollivier is appearing as a witness in connection with this motion of Mr. Gray's, but we shall be able to ask him questions afterwards.

The CHAIRMAN: I think that Dr. Ollivier would have no objection to answering questions. He appears as an expert witness for the committee. He is a legal officer of the crown, legal counsel for this committee. Dr. Ollivier, it is agreed that Mr. Gray is giving up his right to speak, so that we may hear from you first.

Dr. P. M. OLLIVIER (*Law Clerk to the House of Commons*): In deference to Mr. Nugent, I do not think I should repeat the arguments which you have already read this morning. You have read them much better than I could have done. I would only refer to a distinction which I do not think has been made, between a committee of the whole and a standing committee.

I think the rules which Mr. Nugent invoked apply mainly to the committee of the whole. Rule No. 60 of the standings orders, to be found in Beauchesne at page 192, says:

60. A motion that the Chairman leave the Chair is always in order, shall take precedence of any other motion, and shall not be debatable.

You will notice in Beauchesne that this comes under the chapter heading "Deputy speakers; committees of the whole; supply; ways and means". The reason is that the committee of the whole, whether it be the committee of the whole itself, or the committee on supply or the committee on ways and means, it does not specify, would cease to exist and would have to be renewed. That is why in the House on every occasion when the committee is sitting a motion is always made that the Chairman leave the chair, and they ask for leave to sit again. But such a motion in a standing committee is never made.

When there is a motion that the Chairman do leave the chair you have one meaning in the House of Commons, and another meaning in a standing committee. After all, committees of the whole in the house are only an extension of the house. It is still the house sitting, but it is the house sitting in committee. The rule is that if the Chairman rises without asking for permission to report, or asking for the right to sit again, then the committee is extinct, and has to be revived. That is a point that I did not insist upon in the steering committee, if I may say so. That is my main objection to following the same procedure here. I do not object so much here. I noticed that it mentioned that we acted contrary to the rules. But I am not so much concerned, about whether we acted contrary to the rules as I am that they be disregarded; or, if it was not an action contrary to the rules, it would mean only that the committee should adjourn. I think that would be my main point.

I would like to read paragraph 410 from Beauchesne's Parliamentary Rules and Forms.

410. If the committee cannot go through the whole bill at one sitting the committee direct the chairman to report progress and ask leave to sit again. When the committee is about to rise, the chairman says: 'Shall I report progress and ask leave to sit again?' and, if there is no dissent, he immediately leaves the Chair, the Speaker resumes the Speaker's chair and the chairman reports as follows:

In this committee, as in any other standing committee, there is never a motion made that the Chairman leave the chair and that the committee report progress and ask leave to sit again. If you do that, it gets you nowhere.

Continuing the citation:

'Mr. Speaker, the committee of the whole are considering Bill No. X and have instructed me to report progress and ask leave to sit again.' The Speaker repeats the report and adds: "When shall the committee sit

again? Next sitting of the house,' or if the committee is likely to take up the bill again on that day, he says 'At a later hour this day.

That again is under the committee of the whole and the deputy speaker.

Then at paragraph 230(2):

A committee of the whole house has no power either to adjourn its own sittings or adjourn its consideration of any matter to a future sitting.

Well, the standing committee certainly has power to adjourn their meetings to another date or to the call of the Chair, which a committee of the whole house has not the right to do.

I will refer you to 275 :

The committees of supply and ways and means are kept alive by an order that they shall meet again at the next sitting of the house. Should they report and not receive this permission, they would cease to exist and the house would have to set them up again. They consist of the whole house and are only a committee in the artificial sense of the word. They are appointed by merely naming a date for the house to resolve itself into committee. On that date, a motion is made to the Speaker to leave the chair.

If I might refer now to something that happened in 1960-61, I will give you an example of the same kind of question. You will remember in 1961 there was an act representing the Bank of Canada. It had only one clause. The clause was that from the coming into force of the act the position of the Governor of the Bank of Canada would cease to exist. This bill went through the house. It went to the Senate. Then, as usual, it went to one of the committees of the Senate. The committee to which it went was banking and commerce, as a matter of fact. Mr. Coyne appeared before that committee. Before the committee finished its procedure, Mr. Coyne had resigned. Therefore, it seemed there was no reason for the Senate to proceed with this bill. The Governor of the Bank of Canada having resigned, there was no useful purpose to be gained by going ahead with a bill that said that his position would be terminated on the coming into force of the bill. Nevertheless, the Senate committee decided they should report, and I will read the report of that standing committee as an example:

The standing committee on banking and commerce to whom was referred the Bill C-114, intituled: 'An act respecting the Bank of Canada', has in obedience to the order of reference...

And I underline those words, "in obedience to the order of reference".

...of July 8, 1961, examined the said bill and now report as follows:

Your committee recommends that this bill should not be further proceeded with...

and so forth. The rest is not important.

I think the report that should be made on the bill in this case, if you do not want it, is that it should not be proceeded with, not that the Speaker leave the chair.

The CHAIRMAN: Thank you, Dr. Ollivier.

Mr. NUGENT: There is one part not quoted so far by Dr. Ollivier in the volume he has in front of him there. (Bourinot's Parliamentary Procedure, 4th Edition) I would ask him to quote from page 527. I think there is a precedent there showing what the committee did last week was in order.

Mr. OLLIVIER: The heading of the top of that page is "Reports from the Committee of the Whole". I will read what 527 says, if you wish. I have read it before but I am not sure whether I gave you that reference myself.

In this case no report is made to the house and the bill will disappear from the order book. The same will happen if it is found that there is not a quorum present in the committee. But the committee 'have no power to extinguish a bill, that power being retained by the house itself.' Consequently the bill may be subsequently revived by a motion, without notice, to fix another day for the committee, and the proceedings are resumed at the point where they were previously interrupted.

The bill will disappear from the order book. That means, of course, that was the procedure at the time. It means the order paper of the house. That, as I say again, is in the committee of the whole.

Mr. NUGENT: The witness tells us the rules of the committee of the whole apply to standing committees except where there are specific exceptions. Is this not true?

Mr. OLLIVIER: Yes, generally speaking it is true; but there are many cases—and the one which I gave you is one where it does not apply. In the committee of the whole you report and ask leave to sit again, and in standing committees you do not report and ask leave to sit again. That is just the difference. That is one case where it does not apply. If it is not provided for, then it does apply.

Mr. NUGENT: Let us establish some differences. Have you found rules that show that this rule you have just read does not apply to standing committees?

Mr. OLLIVIER: I would say it follows from the rules of the committee of the whole that the chairman has to report progress and ask leave to sit again. It follows from that you can move that the deputy speaker or chairman leave the chair, but it is of no consequence. When you move in this committee that this Chairman leave the chair, it is either an illegal motion or it is legal. If it is illegal, then it should not be put. If it is legal, it means only an adjournment.

Mr. NUGENT: Mr. Chairman, I wonder if the witness is aware of the citation in the Senate debates of 1886.

Mr. OLLIVIER: I have read that, and I think it still applies to committees of the whole.

Mr. NUGENT: That was a committee of the Senate, not a committee of the whole. It referred to a citation in the house where a similar thing had occurred and where in the Senate on that particular day they were making a motion to restore one item to the order paper. Is the witness aware of the previous case?

Mr. OLLIVIER: Yes, I have read that decision of 1886, but I would make a distinction there because in the Senate they do not proceed in committee of the whole as we do. All their bills are referred to those general committees and to a certain extent those committees are substituted for our committee of the whole. So I do not think it is a parallel on all fours. It is a very old one; we were just learning the procedure then.

Mr. NUGENT: Is that not true of all our committees to a certain extent? All committees substitute for a committee of the whole, do they not?

Mr. OLLIVIER: They do the preliminary work, but they do that in obedience to the order of the house. When you refer a bill from the House of Commons to a standing committee, the committee has received instructions. The order of reference is the bill itself that is sent to the committee, and in obedience to that order you have to report the bill.

Mr. NUGENT: I have one more question.

Mr. OLLIVIER: That is part of the order of reference.

Mr. NUGENT: Is a committee not master of its own proceedings?

Mr. OLLIVIER: According to the rules and according to the instructions it has received.

Mr. NUGENT: Surely the time to say this is out of order is at the time, and if the committee has accepted it as being in order and passed it, can the committee now turn around and reverse itself?

Mr. OLLIVIER: No, I am not saying necessarily that the committee could reverse itself; but I am saying that it has not the same meaning as it would have in the house.

As I said, the decision of the committee or the Chairman was either legal or illegal. I do not think the Chairman, any more than the Speaker in the House, should ever reverse his own decision. It is up to the committee or the house to reverse that decision. What I say is that that decision has not the same meaning or significance as it has in the House. If it is not legal to move that the Chairman leave the chair and it is still moved and passed, then it only means an adjournment of the committee.

Mr. NUGENT: The witness was not here when the motion was passed; but as I recall, it was made very manifest that this was not the intention of the committee. When the motion was introduced I suggested the purpose was to kill this bill—this very bad bill, I might add. So there could be no question that your interpretation of the rules must be that the committee did not mean what it said, that it merely meant an adjournment, because it was very plain from the motion what was meant.

Mr. OLLIVIER: Can we say probably that the committee did not exactly know what it was agreeing to?

Mr. NUGENT: The committee did know what it was agreeing to; that is the whole point. It may be that when I say "kill the bill" I am speaking a little strongly, because it did it effectively and practically but not technically, in that it could be revived in the house. Since it is a private member's bill, it is not likely to come up again this session. There is no doubt that the substantive motion passed last week was not a motion of adjournment and could not be argued to be such by anyone. Where does that leave us?

Mr. OLLIVIER: I will tell you where it leaves us, except this: The citation of 506 from Beauchesne governs, that every bill referred to the committee must be reported and that it is the duty of every committee to report to the house the bill that has been committed to it. Therefore, if you do something contrary to that, you have to come back to the main proposition.

Mr. NUGENT: Would the legal adviser not tell us that if this committee failed to report a bill the proper procedure would be for the house to bring it up on motions, or request the committee to do something? That is what has been done on occasions where the house has not agreed with the action of a committee; and there are many citations there.

Mr. OLLIVIER: Those occasions to which you refer I think are cases where the committee did report to the house and the bill was put back. I think Mr. Aiken had one the other day. The bill was reported to the house in an adverse manner, and Mr. Aiken moved that it be sent back to the committee. That was carried. However, a report had been made to the house before. You have to make a report.

Mr. NUGENT: There are cases where a committee adjourned for a considerable length of time and a motion was made in the house that they resit and report quickly. Is that not the procedure?

Mr. OLLIVIER: No, that is another question. If there are undue delays in the committee, if nothing has been done, it has not been killed, it has been in suspense, and the house orders the committee to meet again and to deal with it, but not because the thing has been killed. It has not been killed, it has been in suspense.

Mr. NUGENT: In other words, the house can, any time it disagrees with the action of the committee, give new direction or pass a motion or direct a committee to act in any way?

Mr. OLLIVIER: Yes, provided the committee has reported.

Mr. NUGENT: Certainly the failure to report is one of those things that can happen.

Mr. OLLIVIER: Yes, but it has not killed the bill then.

Mr. AIKEN: May I ask a supplementary question?

The CHAIRMAN: This is all on the same subject, and Mr. Cameron has indicated that he wishes to speak.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not think we should waste any more time. There is a perfectly clear citation which Dr. Ollivier has quoted again and again, but which has fallen on deaf ears:

304. (2). A committee is bound by, and is not at liberty to depart from, the order of reference. In the case of a select committee upon a bill—

and this, I take it, is a select committee—

—the bill committed to it is itself the order of reference to the committee, who must report it with or without amendment to the house.

Mr. Nugent has suggested to this committee this morning—and it is an extraordinary suggestion—that actually his motion was not intended to merely get the Chairman to leave the chair, it was a motion to kill the bill. In other words, Mr. Nugent is trying to tell us that his attempt last week, on November 22, was an attempt to do illegally something that he was not prepared to do by the legal and appropriate method, which would be to report against the bill to the house.

Mr. AIKEN: I am very interested in what Mr. Cameron is saying, but he is not asking a question of the witness.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am going to ask Dr. Ollivier if that is not the case and if the action so far taken by the committee, if not rectified, does not constitute contempt of the House of Commons.

Mr. OLLIVIER: I would not go so far. You have cited something I have stated, and I am not ready to say that that was illegal. What I say is that it does not mean the bill has been killed; it only means the committee has adjourned.

The CHAIRMAN: Mr. Cameron, have you more questions?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I take it your opinion now is that the committee should proceed at this sitting or at a future sitting to deal with Bill C-5, and that there is nothing to prevent us from doing so.

Mr. OLLIVIER: Yes, and not only that, I say the committee has to do it.

Mr. GELBER: I would like to ask Dr. Ollivier a question. He said that the intent of the motion was to kill the bill. Has a standing committee power to kill a bill?

Mr. OLLIVIER: No. The committee must report. They can report as they did in connection with the Bank of Canada Act, to say that they recommend that no further proceedings be taken, or something like that; but they have to make some kind of report.

Mr. GELBER: Regardless of what Mr. Nugent says is manifest, Mr. Nugent moved his motion and told the committee that the intent of his motion was to oppose the bill. But the bill would not have been opposed just because he said it was manifest. Am I correct?

Mr. OLLIVIER: I am not quite sure.

Mr. AIKEN: I would like to preface my remarks by stating that I have not seen the transcript of last week's meetings. I understand Mr. Nugent said something to this effect when he made his motion: I move that the Chairman do now leave the Chair, and that his intent was to kill the bill. In fact this is what was said. He used the expression, "kill the bill". I submit it is rather loose but I do not think there is any doubt about the intention. The motion last week was that the Chairman do leave the chair, with the intent that the bill would be terminated—that is, discussion of the bill. I am sure that we will find that these were the words used, and in the same sentence. It is my submission at this moment that the motion really was that the proceedings on the bill should come to an end and that the Chairman leave the chair, and that these words were in the motion when it was made; and if this is the case, then the committee should so report to the house.

Mr. OLLIVIER: That is correct, as to what was said in committee. If everybody read it as if it had been a rule which would apply to a standing committee instead of applying to the committee of the whole, it would have had that effect. But if you quote a wrong rule and try to apply it to a case where it does not apply, then it has to mean something else than would appear to be the manifest intention. There is one way in which to kill a bill, and that is it. That is the whole thing. You cannot pass a motion which disregards an order of reference.

Mr. AIKEN: Is it not our duty to report to the house that the bill was killed in committee?

Mr. OLLIVIER: No.

Mr. AIKEN: But that is what the motion was.

Mr. OLLIVIER: You say you intended to kill the bill, but you did not, because you did not follow the proper procedure.

Mr. AIKEN: I thought that was part of the substance of the motion; that the Chairman leave the chair in order that the bill should be killed.

The CHAIRMAN: Order, order, order.

Mr. OLLIVIER: I would like to answer this last question.

Mr. KLEIN: Let us hear the motion. What is the use of going about it by saying that one thing suggests another?

The CHAIRMAN: All right, if the questioner has no objection. Do you have the motion of last week?

Mr. AIKEN: I would like to hear what was actually said by Mr. Nugent when he made the motion. It was a verbal motion.

The CHAIRMAN: I have sent for it. We might continue with the questioning. It will be here in a minute or so.

Mr. MOREAU: The question is whether the committee intended to kill the bill or not. Mr. Aiken raised this. You have indicated to us that we do not have the power to kill, but we do have the power to recommend.

Mr. OLLIVIER: I think I agree with what Mr. Aiken says. He has reported correctly the motion that was made, and the intent of what was said. I do not disagree with that. But I find it contrary to what May has to say. I am

referring Sir T. Erskine May's Parliamentary Practice, 16th edition, on page 655 as follows:

Reporting of bills to the house before their consideration has been concluded":

It is the duty of standing committees, as of all committees, to give matters referred to them due and sufficient consideration. Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee . . .

And here I underline this, and repeat:

. . . before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.

Among the obligations of the committee to the house is the one that they should report the bill.

Mr. AIKEN: It would not matter what was done last week or at any meeting. We could not determine it.

Mr. OLLIVIER: No. I mean it is the same thing as a motion to adjourn.

Mr. OLSON: That is the point I was going to raise, too. It is argued here that the intent of the motion that the Chairman leave the chair was to kill the bill, and from the quotation that Dr. Ollivier just repeated it is quite clear that this was the intent of the motion, but that it was completely out of order. If the motion was in order at all, then the substantive nature of it was that the committee should adjourn.

Mr. OLLIVIER: I cannot answer that because you have just repeated what I have said.

The CHAIRMAN: At your request the clerk has got for us the evidence at the last meeting. I shall read it to you.

Mr. OLSON: I would like to hear the motion, not the evidence.

The CHAIRMAN: I shall read the secretary's report of the motion taken from the first page of the evidence at the last meeting as follows:

Mr. NUGENT: It is a very simple point, Mr. Chairman.

I move, seconded by Mr. Skoreyko, that the Chairman do now leave the chair. That is a undebatable motion, and it has the effect of killing the bill.

Mr. OLSON: That is an opinion, but it is not binding.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It has nothing to do with the motion.

Mr. OLSON: That may be his opinion, but the motion is that the Chairman do now leave the chair. His opinion has no binding effect upon what passage of the motion would mean.

Mr. SCOTT: His opinion would be binding only on himself.

Mr. KLEIN: If I understood Mr. Nugent correctly, he is saying in essence today that even if the motion was illegal or out of order, the fact that it was adopted made it legal and in order. Therefore we cannot proceed today. I would say that even if it was illegal and out of order, we should not be prohibited thereby from doing something legal today, simply because something illegal was done last Friday. Furthermore, if the motion in effect was to kill the bill, the motion should have said, if I understand it correctly, that this

committee should report back to the house that the bill was rejected. That would be a proper motion, but this motion did not do that. Therefore I think we should proceed with our business.

The CHAIRMAN: We are still questioning the witness. Has anybody any questions?

Mr. WHELAN: I have one question. I am not a legal person, and I may not use the correct terminology. But would you not say that this motion was more of a delaying or mischievous nature than anything else?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think that is a leading question.

Mr. AIKEN: I think that was a facetious question. I would like to ask something serious.

Mr. NUGENT: I have one question. Whatever you may say about the legality or the effect of the motion last week, the witness has told us that there is no doubt about what the committee's motion indicated last week. The committee made a decision to proceed no further with this bill. Yet what is proposed today would be to reverse that decision, which is contrary to the rules. Is that not right?

Mr. OLLIVIER: It was the intention to do that last week, but it was not done in a proper fashion. You can renew your effort to do it by making a report to the house to the effect that the bill be not proceeded with.

Mr. NUGENT: It still has the effect of reversing a decision made last week, has it not, if we change it now?

Mr. OLLIVIER: It might, or it might not.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): We have already reversed the decision of last week by meeting here this morning. The meeting last week was that the committee adjourn, yet here we have met again this morning. Therefore we have reversed that motion. If there was anything to the motion, that is all there was to it.

The CHAIRMAN: Order, please.

Mr. AIKEN: I want to ask a rather serious question. If, as a result of what Dr. Ollivier said this morning, the committee cannot report so long as the sponsor does not agree—

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is not what he said.

Mr. AIKEN: I am sorry. This is in effect what he said: that we cannot report as long as the sponsor desires to continue with the bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is not what he said at all!

Mr. OLLIVIER: There is something in what Mr. Aiken says. If the sponsor of the bill does not want to proceed with the bill, he is not obliged to continue. But there would still have to be a report to the house. When it is a private bill the sponsor does not have to proceed with it. But it cannot be done simply by moving that the Chairman leave the chair. You have to report to the house.

Mr. AIKEN: I have not yet got to my question. I was prefacing it by saying that Dr. Ollivier said that the committee could not report until the sponsor of the bill had agreed to it, or until the committee had completed its examination.

Mr. OLLIVIER: No. I said that if the sponsor did not want to proceed, he has the right—he is the only one who can say “I do not want to go ahead with this bill.” However the committee, if it agrees with him, may report that it should not be proceeded with further. But they still must make their report.

Mr. AIKEN: Just as long as Mr. Whelan wants to keep on bringing witnesses here, we have to go on and on and on?

Mr. OLLIVIER: It is up to the committee to decide how many witnesses it will hear. I agree that the committee is master of its own procedure. I agree with Mr. Nugent in that respect.

Mr. AIKEN: May we have citation 304 read again? The sponsor can call it off but the committee cannot? That is very well put.

The CHAIRMAN: No, I think not.

Mr. AIKEN: Do I have to sit here week after week?

The CHAIRMAN: Order, gentlemen. Please address the Chair. Would all the honourable members of this committee please address the Chair, and I shall recognize you in the order which I see you. If we continue in that fashion, we might get the business done this morning, more normally and equitably.

Mr. AIKEN: I am merely asking Dr. Ollivier if it is not a fact that while Mr. Whelan wants to continue bringing witnesses before the committee we have to proceed in accordance with citation 304 which he read to the committee this morning.

Mr. OLLIVIER: I have no objection to answering that question. Mr. Nugent said before that the committee is master of its own procedure within the rules of the house. As to those rules which apply in a committee of the whole or in any other matter, if you want to call witnesses *ad infinitum* to deal with the bill, you may do so. But if the committee decides that it does not want to hear any more witnesses, the committee can decide that it adjourn. It is purely a matter of procedure within the committee, and within the jurisdiction of the committee.

Mr. AIKEN: May we have the citation read?

The CHAIRMAN: You have asked that citation 304 be read.

Mr. OLLIVIER: Citation 304 reads as follows:

304. (1) A committee can only consider those matters which have been committed to it by the house. C.J., Vol. 65; 539,871.

(2) A committee is bound by, and is not at liberty to depart from, the order of reference. (B.469). In the case of a select committee upon a bill, the bill committed to it is itself the order of reference to the committee, who must report it with or without amendment to the House. M.468.

(3) When it has been thought desirable to do so, the house has enlarged the order of reference by means of an instruction or in the case of a select committee upon a bill by the committal to it of another bill. Mandatory instructions have also been given to select committees restricting the limits of their powers or prescribing the course of their proceedings, or directing the committee to make a special report upon certain matters.

For instance, if there is already one bill referred on a subject, the house might very well refer a second bill and ask the committee to amalgamate the two bills. Sometimes the committee may have to obtain leave from the house to make a special report when its order of reference is limited in scope. But in this case I do not think there is any limitation to the order of reference, which is the bill itself.

Mr. AIKEN: I took down citation 304. I thought that was the one.

The CHAIRMAN: I believe it is another citation you are referring to, and the citation as I regard it does not say what you think it says. I think that is what gave rise to that in your mind.

Mr. OLLIVIER: Which one is it?

The CHAIRMAN: I think it is in May's. Order, order, order. Would you please address the Chair.

Mr. BOULANGER: I was going to raise a point of order.

The CHAIRMAN: I believe it is in May, Citation No. 655. I shall ask Dr. Ollivier to read it.

Mr. OLLIVIER: I now read from 655 of May's Parliamentary Practice, 16th edition as follows:

It is the duty of standing committees, as of all committees, to give the matters referred to them due and sufficient consideration. Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill . . .

That is what I said, a member who is not in charge of the bill cannot ask that it be not proceeded with further. But that does not mean that the committee does not have the right.

Mr. AIKEN: But no one else can?

Mr. OLLIVIER:

. . . nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.

What I am saying is that the motion that the chairman leave the chair is a motion in conflict with the obligations imposed on this committee by the house.

Mr. AIKEN: I was not arguing against Dr. Ollivier's opinion. I was asking the supplementary question: Do we have to go on with this bill, and on and on and on, until Mr. Whelan decides he has had enough? Mr. Whelan is the only one who can move that the committee shall no further proceed.

The CHAIRMAN: Is this a question you are addressing to Dr. Ollivier?

Mr. AIKEN: He has answered.

The CHAIRMAN: Mr. Whelan, Mr. Boulanger, Mr. Basford and Mr. Scott have indicated they wish to ask questions.

Mr. Boulanger, do you have a question you wish to ask?

Mr. BOULANGER: Mr. Chairman, if the committee wants to be serious for one second, surely we have already asked enough questions and have had enough answers from our legal adviser. If we want to show we are serious and we are ready to proceed on this motion and take a vote, there is a time, and that time is right now. The questions that will come up will all come back to the same arguments and answers that we have been listening to here for an hour. I am sure that it is not out of order for me to ask that this be closure.

Mr. AIKEN: We have not finished our discussion yet.

Mr. BOULANGER: I do not want to be accused of trying to enforce closure on the members, but I am sure that many of the members of the committee know what they are doing and—

Mr. AIKEN: You knew before you came here.

Mr. BOULANGER: You will see that there will be no difference between the state of the discussion in the next ten minutes and now.

Mr. AIKEN: Good for you. You can wait another ten minutes. That is ten minutes more than the Liberals generally give us.

Mr. HABEL: You did not give that last week.

Mr. BASFORD: I want to ask one question for Mr. Aiken's benefit. These standing committees can at any time say when they have considered a bill sufficiently to give an opinion; can they not?

Mr. OLLIVIER: Yes, by order to report.

Mr. BASFORD: By motion to the subcommittee on agenda.

Mr. OLLIVIER: Yes, you follow the instructions you have received from the house and you act in obedience to those instructions.

Mr. SCOTT: I want to ask one question because Mr. Aiken has raised a point that worries me also. From the citation you read to us, would you say at any time a private member of a committee can move a motion that we report non-concurrence with a bill?

Mr. OLLIVIER: I suppose you have to go through the process of the committee. You cannot do so before the bill has been discussed. The bill has to be given that serious consideration for which it was sent to the committee. You cannot just arrive in the committee and say "We will not consider it. I move we report immediately to the house."

Mr. SCOTT: Perhaps I am not making myself clear. We have been debating this bill for some weeks now.

Mr. GRAY: I want to raise a point of order. I do not think we have started debating it.

Mr. SCOTT: We have been considering this bill. Suppose I were to think that we had given due consideration and I then moved a motion that we report non-concurrence.

Mr. OLSON: The citation does say that the Chairman of the standing committee—

—will not accept a motion reporting a bill to the house before its consideration has been completed by the committee.

Surely the committee itself would have the right to determine when it had completed its hearings?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like to move that all further discussion on the report of the subcommittee now cease.

The CHAIRMAN: We have a motion before us.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): This has the effect of moving the previous question.

The CHAIRMAN: Yes, and you, with all your previous experience, realize this is not in order.

Mr. KLEIN: I submit that by so moving we are now back in committee and we proceed with the motion. If the Chairman has the right to move on this, then we are back in operation in this committee and we should move to the motion of Mr. Gray immediately.

The CHAIRMAN: Mr. Klein's opinion might fall into the same category as Mr. Nugent's opinion last week. All I have ruled is that I could not, at this time, accept a motion having the effect of putting the previous questions.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I submit Mr. Klein is perfectly right in that having made a ruling you have reinstated yourself in the chair; we have reverted to the position of last week.

Mr. MORE: I would like to raise a point of order while Dr. Ollivier is here. If the effect of our action last week was an adjournment, is another motion not out of order? We have our business; should we not be proceeding with it? Is a motion not out of order if all we did last week was to adjourn?

Mr. OLLIVIER: It had the effect of a motion of adjournment. You did adjourn. You did not fix a day when you should meet again. I suppose it was at the call of the Chair. If you do not set a date when you adjourn, you adjourn to the call of the Chair. The meeting has been called back; you have had your adjournment. The meeting has been called back, and you are proceeding as if you had just adjourned from day to day.

Mr. NUGENT: But we are not.

The CHAIRMAN: Are there any further questions anyone wishes to address to Dr. Ollivier?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I have one question. If this situation is not as Mr. Klein and I suggested it was, is this a social gathering or is this a meeting of the committee.

The CHAIRMAN: This is certainly a committee meeting.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Then we have reversed the decision of last week.

Mr. BASFORD: We have called a meeting to discuss the report of the sub-committee.

The CHAIRMAN: That is right; we are making the report to the committee.

Mr. GRAY: Mr. Chairman, may I comment briefly on my motion?

If you look at Beauchesne's rules to see just exactly what the committee is, you will find it says, at page 236:

285. (1) Originally the word 'committee' was used for the member to whom the study of a bill was entrusted.

I emphasize the word "study". I think the only difference today from the historical background of the committee is that there are more people in the committee than just one person, but the basic point is that the committee is still set up for the purpose of study. A comment was made about whether or not a standing or select committee is bound exactly by the rules of the house.

I would draw to the attention of this committee the citation of Beauchesne at page 237, paragraph 288:

Committees are regarded as portions of the house and are governed for the most part in their proceedings by the same rules which prevail in the house.

And I emphasize the words "for the most part". I think Dr. Ollivier helped to make it clear that there cannot be exactly the same rules governing committees of the house or of the whole. He gave a good example about the Speaker leaving the chair. So it would appear that the primary object of a standing committee, in that the standing committee considers all subjects and a select committee studies particular subjects, is to study a bill pursuant to the reference of the house and to report to the house, and not make a final disposition of it. I think this is our primary obligation and our only real duty. I think this is amply demonstrated by Dr. Ollivier's citation. However, I would like to add another useful citation. Dr. Ollivier referred to paragraph 304(1) which says:

A committee can only consider those matters which have been committed to it by the house.

However, there remains a quotation by Bourinot which says:

... this principle is essential to the regular despatch of business; for, if it were admitted that what the house entertained in one instance, and referred to a committee, was so far controllable by that committee that it was at liberty to disobey the order of reference, all business would be at an end, and as often as circumstances would afford a pretence, the proceedings of the house would be involved in the confusion.

I suggest that is a very useful and fair statement to supplement what Dr. Ollivier has already given us.

What Mr. Nugent is suggesting is that the committee, of its own volition, can in effect prevent a bill from being considered by the house simply by a motion of the type made by Mr. Nugent. There was a question, putting it in another way, of whether we can disregard the clear instructions given us by the order of reference.

I would suggest that even if these citations which I have read and which Dr. Ollivier has read were not available to us, it would surely only be common sense to suggest that we cannot act in disobedience of the order given to us by the House of Commons. If this were not so, a quorum of eight or ten men on a standing or select committee could in effect nullify the will of a majority of the whole House of Commons which had approved a measure in principle.

Therefore, if there is any conflict between any citation or standing order on which Mr. Nugent's motion is based, the will of the house, as expressed in its order of reference, must prevail because in reality one order of the house, the standing order, has in effect been superseded or suspended in a particular instance by another order of the house, its order in reference in respect to the bill in question.

I suggest the conflict is more apparent than real because, as Dr. Ollivier suggested, neither the standing order nor any citation on which Mr. Nugent's motion is based refers to a standing committee at all.

If you look at the place where standing order 60 comes, and as Dr. Ollivier says if you look at the chapters in Beauchesne, you will see they clearly refer to a committee of the whole house, the ways and means committee and the supply committee.

In citation 326, which is in similar terms to 412, there is clear proof that they could not possibly apply to standing committees, and I say that because, without reading the whole, it says that the chairman in such cases, being without instruction from the committee, makes no report to the house. It further says that a bill disposed of in this manner disappears from the order paper, though it can be revived by an order of the house.

If I am not mistaken, when something is referred to the committee of the whole, it remains on the order paper of the house; whereas when something refers to a committee of this nature I do not think it is on the order paper, and in fact a standing committee has no order paper as such.

It might be argued that the order of reference is in fact the order paper. If it is, this leads to the ridiculous conclusion that this committee can change, of its own volition, an instruction given to it by the House of Commons; and I think we will have to agree that we do not have the power to do anything like that. I think my comments help to show that on that basis, the motion that was made the other day, as Dr. Ollivier said, if it had any purpose at all, would merely have been to adjourn that particular meeting.

May I make another brief comment on the wider implications, implications other than that of the application of this narrow technical rule?

There are many in this house who have been concerned about the recent development that there should be a more active and useful role for members. It has been suggested that one way of carrying out this role has been by participation in committees considering legislation. I suggest if this motion is given the interpretation Mr. Nugent suggests, the effect will be to effectively cause any member of the House of Commons itself to want not to send any bill to the committee; and this particularly refers to government business. If this motion is allowed to stand, I think it will tend to draw narrower even the limited use that is presently being made of standing or select committees, and I think that will be very unfortunate.

Let me make one final comment. Mr. Nugent has suggested in the course of his questioning that this is a bad bill, that there is something wrong with it, and so on and so forth. It would seem to me that if he had such firm opinions on the bill, and if he had sound arguments to support his opinions, then he should have been willing to put his opinions to the test of debate and consideration at the proper and usual stage, which would be once all the witnesses had been heard and we began discussing and considering the bill itself, clause by clause. Then finally we would report to the house whether we were in favour or against the bill, or whether we should amend it, and so on. I can only suggest that by the use of this procedure Mr. Nugent himself had indicated he feels that his views on this particular subject are not as sound as he later stated to the press.

MR. NUGENT: I will be heard on that.

MR. GRAY: However, I would like to suggest, without going into further detail on this point, that I think it should be a basic principle of a democracy that before we come to a conclusion we hear all the evidence, discuss the bill on its merits, and then vote upon it. If we support this motion today, we will not only be in accord with the proper precedents and rules of the house but we will be carrying out the duties imposed upon us to give a proper study to legislation and report in a detailed way on the bill to the House of Commons.

MR. NUGENT: I think Mr. Gray hit on a point that certainly is going to be considered very seriously here, that is the use of committees and the effect of our action upon it. That is exactly what prompted me to make my motion last week.

As I understand the situation, the only groups who were to come to give evidence on this bill, other than Dr. Barry, were two groups who were opposed to it. So we have had representation from all those who were sponsoring it.

There was no doubt in my mind that it is a very bad bill, and there is no doubt now. It seemed to me there was considerable opinion in the committee to that effect, and that we had given this bill more than ample discussion.

Since Mr. Gray has mentioned the use of committees, I merely point out that this is a private member's bill. Most private member's bills get one hour's discussion in the house. If they are very bad bills they get off with discussion, but this went past that stage even though in the house there were some doubts expressed on the effect it would have. The house now comes to this committee, where we have sat for meeting after meeting. The more we sit, the more obvious it becomes that the bill does not do what it is supposed to do; that in fact it is broader in scope than it purports to be; that it does more harm than good, and that we are going to continue to take up more and more time on it. I believe in the system of having everyone heard who wants to be heard, but just as in courts once the judge has heard one side and says the case is not proven, then it is stopped. I hoped by this procedure to save the committee the trouble of coming back for several more meetings. I know last week a lot of people thought it was more trouble. Mr. Cameron is very spirited this morning, very angry, and says we are taking time discussing this, but he could not take the time to be here last week. There were not very many members here last week. That being the case, I felt the way in which I put my motion last week was a good way. I felt the house made a mistake in bringing this to the committee. I felt we had gone on far too long with it. It was more and more obvious that the bill was hopeless. The method upon which I hit was, I thought, a way not only of disposing of the bill but of giving emphasis to the belief I found current in the committee that the less said about this the better, and the quicker we got rid of the bill the better. Therefore, if it had been

achieved and if it had been taken off the order paper we would not have had to bother with this bill any more.

As to the rules, I may say that while Dr. Ollivier has given us valuable testimony from his great experience, the most significant part in connection with the rules is that the rules in standing committees are governed for the most part by the rules in the house. Dr. Ollivier in his testimony has been very careful to point out those cases where this has been distinguished, where he wants or finds it useful. But it does strengthen my own belief that the rule in standing committee is the same in the house unless one can find a specific argument for excluding it; and since there is none here, since there has been no quotation to that effect, then the rule in the standing committee that a motion such as mine, a ruling in general of the house, the committee of the whole, having gone into effect still applies in the committee unless you can find authority saying directly it does not, and there has been no such authority. One can belabour the point, but I still think the disposition made last week was the soundest, the best, and would save us all a great deal of time. We are now going to be put in the curious position of reversing the considered opinion and voice of the committee last week, and we are now going to be in the position of saying it does not matter who has a majority one day, you can always correct it next week. It has never been done before.

If this committee ever looks really foolish in the eyes of the public, then I suggest this is going to be the time when we really will look foolish.

For that reason I cannot vote for the motion. I have to vote against it, because I think it is an abuse of the power inherent in a majority I think it is an abuse of the rule, that the steering committee brings it back again, and I think it is an abuse of the committee generally to go back to this matter.

The CHAIRMAN: Let us carry on with the questions.

Mr. MOREAU: I appreciate some of the points you have been making. I have no serious disagreement with them. Perhaps you can tell me this: why in the committee last week did not you make a motion that the bill should not be proceeded with, and that this be our report to the house. My conviction is that if we had taken a decision in that form last week, that would have been "it" as far as Bill C-5 is concerned, and that would be our report. I wonder why you proceeded with undebatable motion?

Mr. NUGENT: Such a report would have to go to the house. It would be purely a report of the committee, which would have to be adopted, and it might mean that this bill would get further debate. I was trying to find a method to get rid of it once and for all in order to show by the way it was handled just how bad I thought it was.

Mr. MOREAU: Would you not say that this was a form of closure which you were trying to apply?

The CHAIRMAN: Order. I have more people who wish to speak on the motion. I have Mr. Ryan, Mr. Olson, and Mr. Scott.

Mr. RYAN: Mr. Chairman, I thought I would say something. I think this committee is in much the same position as a court. I believe Mr. Nugent is confusing this committee and its terms of reference with an appeal or a magistrate's court. I think any civil court would hear all the evidence. I think there should be a fair hearing of this bill, whether we agree with all of its provisions or not. For myself, I think there is something very interesting in this bill, something which should be followed up, maybe not by the passage of the bill the way it is. But I think that the committee is really duty bound to examine it carefully and to make recommendations in respect of the proposition mainly outlined in the bill. The proposal itself may not be acceptable, but there are two or three other alternatives we could examine. I submit we should in our report back to the house make recommendations that we consider could

properly come from this bill. One such recommendation which should be considered, I submit, is to insure bank loans made to secondary producers in respect of the products of primary producers.

Mr. OLSON: First of all, I would like to say that the discussion which has taken place respecting the good or bad features of Bill C-5 are out of order, within the context of the motion before the committee now. I think that all we have to decide is the effect of the motion that was moved last Friday, (a) that it simply adjourned the meeting for that day, or (b) that it was intended to kill the bill. I am not going to go over the evidence and citations which Dr. Ollivier presented, but as far as I am concerned, I believe that this committee has no power to kill the bill. We must obey the instructions we get from the House of Commons, and that is to make a report. At the same time the report that is now under consideration by motion from the subcommittee asks whether what was done was contrary to the rules. Do you believe that the motion that the Chairman do now leave the chair is contrary to the rules? I think the motion was in order. It is the effect of the motion that I am concerned with. As far as I am concerned, it was simply that the meeting be adjourned for that day.

Mr. SCOTT: I have one brief word arising out of Mr. Nugent's remarks. No one quarrels with his right to use the rules in any way he wishes in order to achieve his purpose. But if by the use of the rules he does it in a way which the committee may later feel is not in accordance with the rules, I do not think it should be attributed by him that we are making fools of ourselves before the committee. He certainly should be given an "A" for effort in bringing up this idea. But because we may later feel that it is contrary to the rules, I do not think he should impute motives to the committee.

The CHAIRMAN: Are you ready for the question?

Mr. AIKEN: In reply to Mr. Olson, I think there is a distinction between a motion to adjourn and a motion that the Chairman leave the chair. To my mind the latter motion that was made is a technical motion which must have some effect. I think there is no problem if there is a motion to adjourn, if it is an adjournment which terminates the meeting for the day. But a technical motion that the Chairman leave the chair is always interpreted—certainly in committees in the house—that the Speaker leave the chair, and that it terminates the proceedings, or whatever we are discussing. So to that extent I cannot agree that it is merely a question to adjourn. I feel that it is a technical motion which surely must have some effect. If it has no effect at all, well then we have merely wasted our time. But I cannot believe that it has no effect, and I cannot feel that it has any other effect than what Mr. Nugent had in mind.

I respect Dr. Ollivier's opinions very much. As a matter of fact, I accept them, but I still will vote against the motion from the subcommittee, because it has not been clarified to my mind what the effect of the motion was that the Chairman leave the chair. Is it a technical terminating motion? What it determines is certainly not the proceedings of that day but merely that the committee adjourn. Maybe we did not make the motion in the committee, but if this is the case, we should make it clear. I have always understood that it terminated the proceedings.

The CHAIRMAN: Is the committee ready for the question? The question is on a motion made by Mr. Gray seconded by Mr. Basford:

- (1) that this committee supports the opinion of the subcommittee on agenda and procedure that the action of this committee on Friday, November 22, was contrary to the rules;
- (2) that this committee should forthwith resume its examination of and inquiry into Bill C-5 in order that the committee may report

its observations and opinions thereon to the House of Commons in obedience to the order of reference of the said house dated June 27, 1963.

All those in favour of the motion will please indicate by raising one hand.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there an implication in that, Mr. Chairman?

Mr. CHAIRMAN: You may lower your hands. All those contrary minded will indicate in the same fashion.

Mr. NUGENT: Just say all those opposed. Never mind the contrary minded.

The CHAIRMAN: I stand corrected. I declare the motion carried on division, by 17 to 5.

Motion agreed to.

Mr. AIKEN: I have a motion to make, if there are no others from the floor. Mr. Cameron made a motion, and Mr. Gray made a motion, I assume they were similar to what has already been made.

The CHAIRMAN: The motion just put was that this committee forthwith resume its examination of and inquiry in connection with Bill C-5. It is for an examination anyway into Bill C-5, and I presume we are still on Bill C-5. However it is now 25 minutes to 11. Ten minutes ago I suggested to the two witnesses who would have testified at this time, that they might leave because it was so close to eleven o'clock.

I think in the light of this, if there are no other motions in this connection, we might now discuss procedure from here on in, let us say, for the meeting next Friday, just in case you want to change the method we have been following.

Mr. AIKEN: My motion will be exactly on this point. I think the discussion which will come from it may terminate it. My motion will merely be—I have not phrased it yet—that the committee discontinue further discussion of Bill C-5, and that it report to the house that it not be further continued. That perhaps would bring the discussion to a close. What I am concerned about is still the effect of the citation that was given, and I am still confused about how long the committee, against its will, or against the will of the majority, can be dragged along with these hearings. I think we should be honest with ourselves and say that the bill is a good idea, and that some people have to be protected, but that this bill is not the way to do it, and that if it be carried, it will be much more damaging to these people whom it is the general intention to protect than it would be valuable. That is the opinion I have.

The CHAIRMAN: Do you want to make a motion to the effect—I think you would have to make a motion, to be in order—that the committee report to the house that the bill no longer be proceeded with?

Mr. AIKEN: May I ask Dr. Ollivier if the appropriate wording of such a motion should include “the preamble not proven”?

Mr. OLLIVIER: No, because that is a public bill. But I think your motion would be in order if you moved that the bill be not further proceeded with, and that it be reported to the house.

Mr. AIKEN: I make such a motion that we report to the house that the bill be not further proceeded with.

The CHAIRMAN: Do you have a seconder?

Mr. NUGENT: I second the motion.

The CHAIRMAN: Normally these motions should be in writing.

Mr. KLEIN: Is it not a rule that when a motion is passed one day saying that we could proceed, it is out of order to make a motion thereafter saying that we should not proceed?

Mr. OLLIVIER: It is just like when it is moved that the house go into committee, you always ask for permission to sit again at the call of the Chair and to report to the house. The fact that somebody has spoken after the motion was carried indicates that you have proceeded. So I think it is in order for you to move that the matter be not proceeded with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I wondered if there is any method by which this committee in reporting to the house can at the same time urge study of this particular question with a view to further legislative action? I would be reluctant to see this bill reported out, just like that.

Mr. OLLIVIER: Yes, you can add a recommendation that this bill be not further proceeded with but that consideration should be given to further study of its implication.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): By whom?

Mr. OLLIVIER: That is up to you.

Mr. AIKEN: I moved a motion, and Mr. Cameron has moved one.

The CHAIRMAN: I have the motion here: moved by Mr. Aiken seconded by Mr. Nugent that this committee report to the house that Bill C-5 be not further proceeded with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that there be a rider added to it recommending further study of the subject matter of this bill with a view to the introduction later on of further legislation.

Mr. OLLIVIER: By the government, if you like.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That further study be made by the government.

Mr. OLSON: There is a point of order here in accepting that motion, and it arises out of the citation from the 16th edition of May's Parliamentary Practice at page 655 where it says:

Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee . . .

It seems to me that this committee, or the Chairman cannot even accept this motion until the committee first decides that it has completed its study of the matter referred to it. I do not know how to get around this, but it seems to me that we are contravening this citation.

Mr. AIKEN: I agree with Mr. Olson on the point raised. But I thought it was clear that the committee could bring its deliberations to a conclusion at any time.

Mr. OLLIVIER: If the committee does not think it has completed its study, it can vote against the motion. But if you vote for the motion, it indicates that you consider that you have completed your studies.

The CHAIRMAN: We are now speaking to the point of order raised by Mr. Olson.

Mr. GRAY: I think Dr. Ollivier answered that if we can interpret this as meaning that we have finished our study, we can have one motion. That is Dr. Ollivier's opinion. But we may need two motions: one that we complete our consideration of the bill forthwith, or by a certain date, and if that passed,

then we would have the other motion made by Mr. Aiken. I think there is some merit on balance, so that we do not get into a useless argument.

Mr. OLLIVIER: The only thing you have to do is to vote against the motion and if you have considered the subject sufficiently, you can vote for the motion.

The CHAIRMAN: On a point of order, although Mr. Olson thought I must accept it, I think I would like to look into the point brought up by Mr. Olson, if the committee feels that this is feasible. We have had a very long discussion this morning on this question of procedure, much of which is unprecedented, as all members will well realize. Since this particular motion now touches on some points which were raised, I would not like to accept this motion until I was absolutely sure that I was doing the correct thing. So with the committee's permission, and in view of the time being a quarter to eleven with the house sitting at 11 o'clock, I would like to consult legal counsel on this and to look at the precedents and to report back at a meeting which the committee might permit to be held at the call of the Chair. I would also ask for another meeting of the steering committee in order to ascertain that we do not get into another long procedural discussion by accepting this motion. I would ask you to give me this permission.

Mr. GELBER: I would like to make a suggestion to Mr. Aiken. I agree generally with Mr. Aiken's motion. I also agree with what Mr. Cameron says. I agree that these hearings should not be interminable, and I think that is what is concerning Mr. Nugent; it is concerning others, and it is concerning me.

I wonder if you would include Mr. Cameron's amendment in this motion and also a schedule. There are two or three more witnesses it has been suggested we should hear. Why does he not say that we hear these witnesses and then report to the house?

Let us have an omnibus resolution. If we were to have such a resolution I would be prepared to vote for it.

As a courtesy to the sponsors and as a courtesy to the people who have said they would be prepared to be heard—and there are only two or three—I suggest we should hear the witnesses in one sitting and then terminate these discussions.

If Mr. Aiken could so phrase his resolution, I would be prepared to vote for it.

The CHAIRMAN: I may be a little out of order because we are still on a point of order, but I have a suggestion to make in relation to the people who have indicated that they would like to be heard. The Canadian food processors association were to be heard, at the suggestion of the committee; and the committee requested that they be asked to submit a brief. We asked them to come. They have submitted a brief. They were to have been heard today, but as some of their members come from as far away as Vancouver the steering committee took it upon themselves to suggest they should not come today in view of the situation that has arisen. However, they have sent a brief. We might suggest that their brief be incorporated as an appendix to the proceedings, and then the steering committee or the committee could decide, after having read the brief, whether or not we should have them appear as witnesses. I think this might be considered from common courtesy.

We had also requested the deputy minister of agriculture, Mr. Barry, to be here. He was here this morning but he had to leave.

The committee had also informed the bankers association that they would be given an opportunity to be heard again. In this particular case—and if you will allow me to make another suggestion—we might indicate to that association, if they have further things they would like to say, that they should put them in the form of a brief. This could also be printed as an appendix. This procedure would allow all members to take cognizance of their views.

At that time we could come to a decision as to the disposition of the bill and the type of report we would like to make. This would also permit us to do our business in a reasonably short time.

Mr. Nugent, Mr. Aiken and Mr. Klein have indicated to me that they wish to speak.

Mr. NUGENT: I thought Mr. Olson had merely raised a point, and Mr. Aiken agreed with him. It does seem to make sense that if the committee says wind it up, then we have finished the deliberations and there is no apparent disregard for the rules. The motion, as amended by Mr. Cameron, is likely to be acceptable to the committee at large; all we have to do is put the motion. We would then be finished; I do not think there would be discussions. This actually is what we want to do.

Mr. AIKEN: Mr. Chairman, I wanted to point out a moment ago that my motion was made in order that we could discuss it and then vote upon it. Perhaps we may not be prepared to vote upon it today. If we are not, then we can vote upon it at the next meeting. I merely say that during the course of that discussion it would be in order for members to say we have not finished yet, that we want to hear other people. Or it would be in order to say that during that discussion if the committee unanimously agrees, the general intent of the brief you have sent could be read into the proceedings, and we could then conclude our determinations. My motion was merely to bring the discussion to a speedier conclusion.

Mr. KLEIN: It seems to me there is perhaps general agreement that some aspects of this bill have merit whereas the bill itself as it now stands does not have merit. I would suggest that you appoint a small committee, of perhaps four members.

The CHAIRMAN: A steering committee?

Mr. KLEIN: No, not a steering committee. Perhaps a legal committee could be appointed to redraft this bill or amend this bill, in consent with Mr. Whelan, in a form that might be more acceptable to the committee. In its present form it is not acceptable.

Mr. MOREAU: In connection with the time schedule—and I think this is what Mr. Nugent and Mr. Aiken were concerned with—I wonder if we might not print the brief of the processors as an appendix and ask the bankers association to have their brief ready. If we had a brief from them to include next week, and if then we heard from the deputy minister of agriculture, perhaps we might conclude the business in one meeting.

The CHAIRMAN: May I interrupt the proceedings again to say I had this in mind, and I think I sensed the wishes of the committee when I said that I would not accept this motion immediately, that I would like to obtain guidance to ensure that this was in order at the present time. In the meantime, while I am doing that, I would call a meeting of the steering committee. What we might do today is accept a motion for the Canadian food processors association brief to be printed as an appendix. Would this be the general wish of the committee?

Mr. MOREAU: I so move.

Mr. SCOTT: I second the motion.

The CHAIRMAN: It is agreed that we would not ask the Canadian food processors to send witnesses?

Mr. McLEAN (*Charlotte*): I would like to hear from the processors. They have an antiquated system of doing business and I would like to hear from them.

The CHAIRMAN: The motion by Mr. Aiken will be held in abeyance pending legal opinion. It will be held under consideration by the Chair. We have a motion before us now by Mr. Moreau, seconded by Mr. Ryan, that the Canadian food processors' brief be printed as an appendix.

Mr. SCOTT: I would like to say that the only difficulty in not having them appear is that we are deprived of the right of cross-examination on the brief, which is often more useful than the brief itself. I think they should come and subject themselves to cross-examination by the members.

The CHAIRMAN: In that case, the motion is to the effect that the Canadian food processors' brief be printed as an appendix, and we can leave to the steering committee the question of witnesses.

Mr. MORE: I do not know who you are going to consult to ascertain that the motion is in order. We have had Dr. Ollivier's advice, and he says it is in order. I do not know how you hold this motion over and proceed in the steering committee to decide about the next meeting. You are going to invite processors to come to the meeting. This motion may carry and they might come, at great expense, and then not be heard. It seems to me that Dr. Ollivier's advice might be considered sufficient. If we want to hear witnesses, we defeat this motion now and then the steering committee is clear to set the agenda and call witnesses for our next meeting. If we do not do that, I do not know how the steering committee can call witnesses with any assurance that they are going to be heard.

Mr. AIKEN: If that is the general feeling of the committee, I am prepared to withdraw the motion and put it again next week.

Mr. NUGENT: Let us have it now and then we will be finished.

The CHAIRMAN: The mover has withdrawn his motion.

Actually, I have not accepted the motion yet and as the mover has withdrawn, I cannot accept it now.

Mr. WHELAN: It has been stated here this morning that I am going to continue bringing witnesses here. People who came here asked to come; I did not bring them here. I had no witnesses to bring. I had evidence given to me by legal and financial people that proved this bill was not ultra vires. I would like to present this to the committee. I still take that stand, as I did at the session before last.

If I was unfamiliar with democratic rights and principles, I would say "No, do not let them come"; but I say that this should be ironed out and settled, and the quicker the better so far as I am concerned.

The CHAIRMAN: We have a motion before us that the Canadian food processors association brief be printed as an appendix to the proceedings. The motion was moved by Mr. Moreau and seconded by Mr. Ryan.

Mr. GRAY: Does this mean the steering committee may still decide whether or not the processors will come to give evidence?

Mr. CHAIRMAN: We can decide that right now.

Mr. MOREAU: The purpose of putting the brief in as an appendix to the proceedings is that it will give all the members an opportunity to see the sort of testimony we are expecting. At the next meeting we might save time, if we did have witnesses here, because we would not have to hear them deliver their brief.

The CHAIRMAN: Are you ready for the question?

Motion agreed to.

It may be well, in the five minutes we have left, for the committee to indicate to the steering committee whether or not they would like to hear witnesses next Friday.

Mr. RYAN: I am interested in a fair hearing. I am interested in hearing all sides, in being in a proper position to complete this, and make a proper report with recommendations. I think it is quite possible that we should put a limitation on the time and the number of witnesses if we can. I think that is up to the steering committee.

The CHAIRMAN: I think the members of the steering committee who have been here this morning realize what the committee on the whole is thinking.

Mr. OLSON: In view of my obligation to be in the house, I move adjournment.

Mr. MORE: I want to raise one question. I am a layman, and I am frank to admit it. I voted against the motion to adopt the steering committee's recommendations because I did not think they were in accord with the facts. In my opinion, what Mr. Ollivier said was not that the motion was out of order. He said, that its effect was to adjourn this committee, but the committee's report did not accept this. They said further that illegal action had been taken. I think it is in the interests of correct procedure that we obtain some direction.

The CHAIRMAN: The committee has disposed of that matter and we are now considering Bill C-5.

Mr. KLEIN: May I say that we would be derelict in our duty if we did not hear witnesses who want to come here to be heard.

Mr. OLSON: I have moved adjournment.

Mr. KLEIN: I second the motion for adjournment.

Motion agreed to.

APPENDIX A

JOINT SUBMISSION

BY

THE CANADIAN FOOD PROCESSORS ASSOCIATION

THE ONTARIO FOOD PROCESSORS ASSOCIATION

THE WESTERN FOOD PROCESSORS ASSOCIATION

THE QUEBEC CANNERS ASSOCIATION

TO THE

STANDING COMMITTEE ON BANKING AND COMMERCE

OF THE

HOUSE OF COMMONS

IN RESPECT TO BILL C-5—AN ACT TO AMEND THE BANKRUPTCY ACT

The fruit and vegetable processors of Canada welcome this opportunity of presenting this submission to the Committee on behalf of their members.

The membership of these Associations, all of which are non-profit organizations, is made up of firms engaged in the canning, freezing, pickling, and preserving of fruit and vegetable products. Because of their operations our seasonal products are made available to Canadian consumers and others all year around. The membership of these organizations would account for over ninety percent of the Canadian production of processed fruits and vegetables. This submission is presented jointly on behalf of the following Associations.

The Canadian Food Processors Association

The Ontario Food Processors Association

The Western Food Processors Association

The Quebec Canners Association

The life-blood of a food processing firm is the raw product of the primary producer. Therefore, Bill C-5 is of particular concern to the fruit and vegetable processing firms even though the Bill applies to many other products and processing industries. This submission will confine itself to Bill C-5 as it affects the processors of fruits and vegetables.

We believe the Committee members may wish to question us on various points and so that this can be done on a national, as well as a regional basis, the witnesses here today are the Presidents, or their appointed representative, of the various Associations.

The intent of Bill C-5, as covered by the Explanatory Notes, is, "to prevent financial distress suffered by unpaid primary producers when the processor in possession of their products goes bankrupt". After studying the evidence placed before this Committee by the Canadian Banker's Association, Superintendent of Bankruptcy, The Canadian Credit Men's Association and the Clarkson Company, it becomes apparent that in their opinion Bill C-5, if adopted, would create some serious problems in the present control of credit.

We must be guided by those experienced and qualified in matters of legislation under the Bankruptcy Act and the Bank Act to make sure such legisla-

tion and Acts do not unduly restrict credit to a degree where this would have any adverse effect on the future development of this industry.

If the intent of Bill C-5 is to find some way to provide means whereby the grower's risk is on a sounder basis then we support the intent. We feel that an ounce of prevention is worth more than a pound of cure. If growers at present lack the means to secure proper credit information on which to decide whether or not they should contract with a processor certainly something should be done to correct this situation.

In Ontario, which is a major producing area for a number of processing crops, we feel there is ample provision in the Farm Products Marketing Act to permit satisfactory investigation of the financial responsibility of a processor. We feel growers can and should investigate the financial responsibility of each processor and, if not satisfied, they can have such a firm refused a licence.

You have the opportunity today to question witnesses from all areas in Canada on this subject of credit information available to growers or their Boards.

We fully appreciate the seriousness of the situation where a grower has been unfortunate enough to contract with a processor who goes into bankruptcy or liquidation prior to the grower having been paid for his goods. We fully concur that steps should be taken by the growers, or their appointed organization, that will provide some protection and relief in such circumstances. This might take the form of some plan of insurance or a levy to go into a pooled fund whereby such loss is provided for on a share basis.

In 1962 the total acquirements of Canadian fresh fruits and vegetables used in processing of food commodities amounted to:

(a) Fruits	tons	231,579
(b) Vegetables	tons	896,586
Total		<u>1,128,165</u>

A very small levy per ton would soon create a very substantial fund to cover losses through bankruptcy.

The suggestion has been made that a contract between a grower and processor might contain a clause covering payment to the grower. In British Columbia there is a clause in their contract for peas, under which the processor must provide the grower with security for any unpaid balances after September 15th. This clause was brought into effect after a processor had gone into bankruptcy.

We have already pointed out the importance of the grower to the food processing industry. We look upon the grower as a very important segment of our industry, as a business man rather than a wage earner. It should be kept in mind that the processor's relation with the grower goes far beyond the mere contracting of acreage at a fixed price. The processor, in many instances, supplies the seed or plants and, through his fieldmen, provides the grower with a program for fertilizing, spraying and crop control.

Even though the grower and processor are so closely related in the production of processed foods, we feel that each segment of industry must be looked upon as a separate business and that when it comes to financial arrangements this is a matter of negotiation and agreement between those involved. To give preference to any particular creditor or class of creditor for goods

purchased or contracted for would create a situation that would prove very dangerous. We feel the following will illustrate and justify our concern in this regard:

This shows the value of purchases in 1961 for the specified items as compiled by the Dominion Bureau of Statistics in their report "Fruit and Vegetable Canners and Preservers, 1961":

Canadian grown fresh fruits	\$ 17,254,000
Canadian grown fresh vegetables	34,265,000
Metal containers	55,538,315
Glass containers with cartons	10,384,310
All other (cartons, labels, caps, etc)	15,649,640

If any segment of industry becomes a preferred creditor for any reason it will certainly result in other creditors asking for the same treatment. In our opinion it would bring on a chain action that would result in confusion and discrimination with the result that credit would be restricted and the future development of the industry severely affected.

We believe that the sponsor of Bill C-5, Mr. Eugene Whelan, M.P. for Essex South, has rendered the processing industry a great service through his desire to improve the credit risk and security of primary producers. We feel much can and should be done to correct this situation. Other industries, such as the dairy and fish industries, have found a solution to this problem of payments. We respectfully submit that what others have done we can do and assure you of our earnest and sincere desire to cooperate in reaching a satisfactory solution.

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(HOUSE OF COMMONS
First Session—Twenty-sixth Parliament)
1963

STANDING COMMITTEE

CANADA,

ON

BANKING AND COMMERCE

(Chairman: EDMUND ASSELIN, ESQ.)
MINUTES OF PROCEEDINGS AND EVIDENCE
No. 8

(FRIDAY, DECEMBER 6, 1963)

Respecting
(Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing))

WITNESSES:

(Mr. P. R. Robinson, Manager, Canadian Food Processors Association;
Mr. Guy Limoges, President, Quebec Cannery Association.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-
Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-
Cowichan-The Islands*),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-
Carleton*);
Gelber,

Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Irvine,
Jewett (*Miss*),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,

Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, December 6, 1963.

(17)

The Standing Committee on Banking and Commerce met at 9:10 a.m. this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Douglas, Gray, Habel, Hahn, Kelly, Klein, Lloyd, McLean (*Charlotte*), Morison, Otto, Pascoe, Ryan, Rynard, Thomas, Vincent, Whelan—(22).

In attendance: Mr. P. R. Robinson, Manager, Canadian Food Processors Association; Mr. Guy Limoges, President, Quebec Canners' Association.

Also present: Dr. P. M. Ollivier, Parliamentary Counsel.

The Chairman stated that the Sub-Committee on Agenda and Procedure met on Tuesday, December 3, 1963, and read the report of the Sub-Committee, which is as follows:

"Your Sub-Committee noted that the following witnesses have been invited, but have not yet appeared before the Committee: The Canadian Food Processors Association, the Canadian Bankers' Association and the Deputy Minister of Agriculture, Mr. S. C. Barry.

Your Sub-Committee agreed to recommend as follows:

- (1) That all the above-named witnesses be notified that, if they wish to make any further representations to the Committee, the Committee will hear such representations at the meeting of Friday, December 6th;
- (2) That the meeting of Friday, December 13th, be devoted to clause by clause consideration of the Bill and preparation of the Committee's report to the House;
- (3) That the Committee may be required to hold an extra meeting early next week to consider four Private Bills now on the House Order Paper."

On motion of Mr. Hahn, seconded by Mr. Lloyd, the report of the Sub-Committee was approved.

The Chairman stated that the Deputy Minister of Agriculture, Mr. S. C. Barry, had been contacted but because of a prior engagement he was unable to attend today. The Committee agreed to dispense with hearing Mr. Barry.

The Chairman then read a letter from the Secretary of the Canadian Bankers' Association stating that representatives of that Association were unable to attend today's meeting but would have a supplementary brief in the hands of the Clerk not later than Wednesday, December 11th. The Committee agreed to receive the brief of the Canadian Bankers' Association but not to invite them as witnesses.

Mr. Aiken referred to a motion which he had made at the last meeting to the effect that this Committee report to the House that Bill C-5 be not further proceeded with. He had later attempted to withdraw the motion but the

seconder had not consented to its withdrawal. The Chairman pointed out that, in any event, he had not accepted the motion. The members gave unanimous consent for Mr. Aiken to withdraw his motion.

The members then resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary products under Processing).

The Chairman introduced the witnesses and Mr. Robinson read a joint submission from the Canadian Food Processors Association, the Western Food Processors Association and the Quebec Cannery Association.

Mr. Robinson was questioned, assisted by Mr. Limoges.

Mr. Whelan said he was preparing a brief which he would distribute to the members by Monday.

At 11:15 a.m., on motion of Mr. Kelly, seconded by Mr. Asselin, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, December 6, 1963.

The CHAIRMAN: Gentlemen, we have a quorum; will you please come to order.

I have a report of the subcommittee on agenda and procedure. This subcommittee met on Tuesday, December 3, 1963, and I would like to read the report into the record.

Report of the subcommittee on agenda and procedure of the standing committee on banking and commerce.

Your subcommittee on agenda and procedure met on Tuesday, December 3, 1963.

Your subcommittee noted that the following witnesses have been called, but have not yet appeared before the committee: the Canadian Food Processors Association, the Canadian Bankers' Association and the Deputy Minister of Agriculture, Mr. S. C. Barry.

Your subcommittee agreed to recommend as follows:

- (1) That all the above-named witnesses be notified that, if they wish to make any further representations to the committee, the committee will hear such representations at the meeting of Friday, December 6.
- (2) That the meeting of Friday, December 13, be devoted to clause by clause consideration of the bill and preparation of the committee's report to the house;
- (3) That the committee may be required to hold an extra meeting early next week to consider four private bills now on the house order paper.

It may be that there will be a fifth bill referred next week.

Could I have a motion to approve the recommendations of the subcommittee?

Mr. HAHN: I so move.

Mr. LLOYD: I second the motion.

Motion agreed to.

The CHAIRMAN: I understood Mr. Barry was to be with us this morning. Unfortunately, a prior and important engagement is preventing him from coming. Actually, it was not Mr. Barry who was pressing himself on the committee but the committee had requested Mr. Barry to come before us. Would the committee care to indicate at the present time whether or not it desires to question Mr. Barry on this subject? Perhaps then we might dispense with the hearing of Mr. Barry, unpleasant as that might be.

I have a letter from the Canadian Bankers' Association addressed to Miss Ballantine, the clerk of our committee.

Miss D. F. Ballantine,
Clerk,
Banking and Commerce Committee,
House of Commons,
Ottawa, Ontario.

Dear Miss Ballantine:

Bankruptcy Act — bill C-5

I appreciate your informing me of the plans which are being made for further committee hearings on this bill and wish to assure you that we are endeavouring to conclude our drafting of the association's supplementary brief to provide information which the committee requested during the course of our earlier appearance on July 26. We expect that the supplementary brief will be in your hands by Wednesday, December 11.

As I already have mentioned in telephone conversations it had been our expectation that there would be further time available to us before our next submission. This as you know is a particularly strenuous period for all of the banks through their pre-occupation with annual shareholders meetings, and this of course means that the senior executives at head offices have extra demands on their time.

It is of course the association's desire to assist the committee in every way possible. We shall be glad to make representatives available for the purpose of giving further evidence on any date commencing, say, with Wednesday evening of next week. If the committee wishes us to make such arrangements it will be appreciated if you will give me as much notice as possible to facilitate our attendance.

Yours truly,

(Sgd.) H. L. ROBSON,
Secretary.

If you recall, we did ask sometime ago—I believe it was at the beginning of our hearings on this bill—that the bankers association return for further questioning.

They will be preparing a supplementary brief and, I think, if I understood the feeling of the committee at the last meeting, it was your wish to end the hearing of witnesses as soon as possible on this bill.

It might be that the committee would like to see the brief or the supplementary brief which the bankers association have prepared and will send to us next Wednesday, without requesting that they come to be questioned about it, as we already have questioned them.

Would my suggestion meet with the approval of the committee?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Perhaps we might have the brief printed as an appendix to the report. Copies could be distributed next Friday morning. Is this agreeable?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Have you a question, Mr. Vincent?

Mr. VINCENT: Mr. Chairman, in respect of the importance of this bill, I do not think anyone in this committee was questioning the principle of it but some were questioning the wording of the bill. Due to the importance of this principle

do you think this bill will be reported to the house during this present session, and be adopted? Will it be possible to report the bill to the house at the end of this session?

The CHAIRMAN: Are you asking me to give my own personal opinion?

Mr. VINCENT: Yes.

The CHAIRMAN: Mr. Vincent, I do not think you were here a few minutes ago when we read the report of the subcommittee on agenda and procedure. This report was adopted.

The effect of this report was that we would hear witnesses today and next Friday we would devote the time of the committee to a clause by clause consideration of the bill and preparation of the committee's report to the house.

You have asked me whether we will be able to report it. As I said, the committee this morning agreed to the adoption of this report. We have agreed to try and prepare a report and to have it ready following next Friday's meeting. It is possible that we will be in a position to make a report on the following Monday.

In view of the adoption of this report, I will call the steering committee together early next week to discuss the kind of report that might be made and submit it following the discussion of the clause by clause discussion of the bill next Friday.

What the house does with this bill I am afraid is beyond the scope of my prophetic powers.

Have you a question, Mr. Gray?

Mr. GRAY: In so far as the report which the committee will prepare and when it will leave this committee is basically within the power of this committee and, of course, after that it is up to the house.

Mr. AIKEN: I think Mr. Vincent is concerned over the possibility of not getting a report forwarded by this committee before the session ends. Also, I think he is concerned that if this report is not forwarded within a reasonable length of time this bill may just disappear.

The CHAIRMAN: Yes, I understood that, and I understand his concern.

As I said, the subcommittee's report was adopted just before Mr. Vincent arrived. I think it deals with the situation quite adequately. I am hopeful we will be able to deal with the report next Friday with enough celerity to give the house time to act on it before the recess.

Gentlemen, we will resume consideration at this time of bill C-5, to amend the Bankruptcy Act.

We are happy to have with us this morning Mr. P. R. Robinson, President of the Canadian Food Processors Association. Mr. Robinson is sitting on my immediate right.

Next to Mr. Robinson is Mr. Guy Limoges, president of the Quebec Canners Association. These gentlemen are representing their organizations and are prepared, I believe, to make a submission to us this morning and then to be questioned on their submission.

Mr. Robinson, would you be prepared at this time to read your brief?

Mr. P. R. ROBINSON (*President, Canadian Food Processors Association*): Yes, Mr. Chairman, if that is your wish.

Mr. AIKEN: Mr. Chairman, before Mr. Robinson proceeds I believe we left the meeting last week somewhat confused over this whole situation.

The CHAIRMAN: Yes, Mr. Aiken, and I suggest we do not at this time return to the state of confusion which existed at that time.

Mr. AIKEN: As I said, Mr. Chairman, there was confusion over what happened. I want to go ahead with the witnesses this morning but I would like to have it cleared up for the sake of the record. I have not seen the transcript.

There was a motion with an amendment by Mr. Cameron which, in effect, would have referred the bill back to the government for re-consideration. In order to facilitate things I offered to withdraw this motion but my seconder did not consent. Mr. Cameron's amendment, I presume, stands. I think there should be some clarification of where we stand now with that.

Mr. GRAY: In respect of the comments made by Mr. Aiken, in my opinion, I do not think strictly speaking, you need a seconder on a motion made in committee, so the fact your seconder did not consent is irrelevant.

I think we have cleared up the matter by adopting the report of the steering committee. In effect, we have adopted the procedure which is somewhat alternate to what you proposed at the last meeting, but which will have a similar effect in bringing this matter to a speedy conclusion.

The matters in issue were discussed fully and I would suggest we proceed to the study of the bill, based on the evidence we have heard over the preceding weeks, at the next meeting. In doing what we did at the beginning of this meeting I think we have clarified the point concerned.

Mr. AIKEN: I requested a ruling from the Chairman but I think maybe Mr. Gray has given it.

The CHAIRMAN: Is it all cleared up to your satisfaction?

Mr. AIKEN: Yes, as long as the record is clear.

The CHAIRMAN: I did not consider I had actually received the motion in that you had withdrawn it, and while I did during the course of the long and labourious discussion we had at the last meeting reserve at one point my decision on the motion I have not gone into the study of it that I might have had you not withdrawn it.

Mr. AIKEN: My only concern was the lack of unanimous consent but I assume there is unanimous consent at this time.

The CHAIRMAN: The report of the subcommittee was adopted unanimously. Would you proceed now, Mr. Robinson.

Mr. ROBINSON: Mr. Chairman, I would like to make one point clear before I read the submission to you.

This submission had been prepared with the hope that it would be presented to you a week ago. However, this did not happen. At that time I had witnesses who would have been representative of processing firms and associations across Canada. I felt this was very important because in my own office we do not deal with negotiations. This is all done at the provincial rather than the national level and, therefore, that was the purpose of bringing these witnesses before you at that time for questioning.

However, gentlemen, I will do my best, with the help of Mr. Limoges, who is the president of Quebec canners. As I said, other than Mr. Limoges, you have not as good witnesses this morning as we would have had last week, if we appeared when scheduled.

I shall now read the brief.

The fruit and vegetable processors of Canada welcome this opportunity of presenting this submission to the committee on behalf of their members.

The membership of these associations, all of which are non-profit organizations, is made up of firms engaged in the canning, freezing, pickling, and preserving of fruit and vegetable products. Because of their operations our seasonal products are made available to Canadian consumers and others all year around. The membership of these organizations would account for over ninety percent of the Canadian production of processed fruits and vegetables. This submission is presented jointly on behalf of the following associations:

The Canadian Food Processors Association
The Ontario Food Processors Association

The Western Food Processors Association
The Quebec Cannery Association

The life-blood of a food processing firm is the raw product of the primary producer. Therefore, bill C-5 is of particular concern to the fruit and vegetable processing firms even though the bill applies to many other products and processing industries. This submission will confine itself to bill C-5 as it affects the processors of fruits and vegetables.

We believe the committee members may wish to question us on various points and so that this can be done on a national, as well as a regional basis, the witnesses here today are the presidents, or their appointed representative of the various associations.

The intent of bill C-5, as covered by the explanatory notes, is, "to prevent financial distress suffered by unpaid primary producers when the processor in possession of their products goes bankrupt". After studying the evidence placed before this Committee by the Canadian Bankers' Association, superintendent of bankruptcy, The Canadian Credit Men's Association and the Clarkson company, it becomes apparent that in their opinion bill C-5, if adopted, would create some serious problems in the present control of credit.

We must be guided by those experienced and qualified in matters of legislation under the Bankruptcy Act and the Bank Act to make sure such legislation and Acts do not unduly restrict credit to a degree where this would have any adverse effect on the future development of this industry.

If the intent of bill C-5 is to find some way to provide means whereby the grower's risk is on a sounder basis then we support the intent. We feel that an ounce of prevention is worth more than a pound of cure. If growers at present lack the means to secure proper credit information on which to decide whether or not they should contract with a processor certainly something should be done to correct this situation.

In Ontario, which is a major producing area for a number of processing crops, we feel there is ample provision in the Farm Products Marketing Act to permit satisfactory investigation of the financial responsibility of a processor. We feel growers can and should investigate the financial responsibility of each processor and, if not satisfied, they can have such a firm refused a license. You have the opportunity today to question witnesses from all areas in Canada on this subject of credit information available to growers or their Boards.

We fully appreciate the seriousness of the situation where a grower has been unfortunate enough to contract with a processor who goes into bankruptcy or liquidation prior to the grower having been paid for his goods. We fully concur that steps should be taken by the growers, or their appointed organization, that will provide some protection and relief in such circumstances. This might take the form of some plan of insurance or a levy to go into a pooled fund whereby such loss is provided for on a share basis.

In 1962 the total acquirements of Canadian fresh fruits and vegetables used in processing of food commodities amounted to:

(a) Fruits.....	tons	231,579
(b) Vegetables	"	896,586
Total	"	<u>1,128,165</u>

A very small levy per ton would soon create a very substantial fund to cover losses through bankruptcy.

The suggestion has been made that a contract between a grower and processor might contain a clause covering payment to the grower. In British Columbia there is a clause in their contract for peas, under which the processor must provide the grower with security for any unpaid balances after September, 15th. This clause was brought into effect after a processor had gone into bankruptcy.

We have already pointed out the importance of the grower to the food processing industry. We look upon the grower as a very important segment of our industry, as a business man rather than a wage earner. It should be kept in mind that the processor's relation with the grower goes far beyond the mere contracting of acreage at a fixed price. The processor, in many instances, supplies the seed or plants and, through his fieldmen, provides the grower with a program for fertilizing, spraying and crop control.

Even though the grower and processor are so closely related in the production of processed foods, we feel that each segment of industry must be looked upon as a separate business and that when it comes to financial arrangements this is a matter of negotiation and agreement between those involved. To give preference to any particular creditor or class of creditor for goods purchased or contracted for would create a situation that would prove very dangerous. We feel the following will illustrate and justify our concern in this regard:

This shows the value of purchases in 1961 for the specified items as compiled by the Dominion Bureau of Statistics in their report "Fruit and Vegetable Canners and Preservers, 1961"

Canadian grown fresh fruits	\$17,254,000
Canadian grown fresh vegetables	34,265,000
Metal Containers	55,538,315
Glass Containers with cartons	10,384,310
All other (cartons, labels, caps, etc.)	15,649,640

If any segment of industry becomes a preferred creditor for any reason it will certainly result in other creditors asking for the same treatment. In our opinion it would bring on a chain action that would result in confusion and discrimination with the result that credit would be restricted and the future development of the industry severely affected.

We believe that the sponsor of bill C-5, Mr. Eugene Whelan, M.P. for Essex South, has rendered the processing industry a great service through his desire to improve the credit risk and security of primary producers. We feel much can and should be done to correct this situation. Other industries, such as the dairy and fish industries, have found a solution to this problem of payments. We respectfully submit that what others have done we can do and assure you of our earnest and sincere desire to cooperate in reaching a satisfactory solution.

The CHAIRMAN: Thank you very much, Mr. Robinson.

Would the members of the committee wish to hear Mr. Limoges' submission at this time.

Mr. ROBINSON: Mr. Chairman, his submission has been embodied in the one I read.

The CHAIRMAN: In that case I would ask the members at this time to direct any questions which they feel may be helpful to either of these two gentlemen.

Mr. GRAY: Mr. Chairman, before beginning with the few questions I have I think we should thank these witnesses, even in advance of our questioning them, for coming today after arrangements were made for them to be here last week, when a broader segment of their industry would have been present.

We do appreciate their interest in presenting to us this information.

First of all, I would like to ask the witness some questions touching on his comments and his study of the evidence of the Canadian Bankers Association and so on.

Is it not correct, sir, that if the farmers are, in fact, paid for their crops they would then have no priority over the banks if Mr. Whelan's bill went through. Am I correct in saying that the situation would be no different from what it was before.

Mr. ROBINSON: Mr. Gray, I did not follow your question.

Mr. GRAY: As I understand it, if Mr. Whelan's bill is passed the farmer who is not paid for his crop would be given a priority over that held by the banks now under section 88, in the event of a processor going bankrupt.

Mr. ROBINSON: Yes.

Mr. GRAY: Now, even if this bill is passed would you not agree that if the particular processor had paid the farmers and went bankrupt the bank would still be in no different position?

Mr. ROBINSON: I would think that was sound reasoning. Do you mean if there is no debt there?

Mr. GRAY: Yes.

Mr. ROBINSON: You mean if prior to his going into liquidation there is no debt there? If that is the case, certainly the banks' position probably has not been altered.

Mr. GRAY: I am sure you will notice, in studying the brief of the bankers association, that they make the point that these bankruptcies are not all that frequent in your industry.

Mr. ROBINSON: I think that is correct.

Mr. GRAY: As already mentioned, they are lending \$100 million a year.

Mr. ROBINSON: We are selling over \$1 million a day so I would expect we will have to have a little bit of financing.

Mr. GRAY: I am not criticizing the amount but, as I recall it, they were making quite substantial profits in respect of interest. Do you recall that?

Mr. ROBINSON: No. I would think this would be a battle between you and the banks rather than with the processor.

Mr. GRAY: I am directing your mind to a certain aspect of their brief in order to lead up to this question which I am going to put to you.

Mr. ROBINSON: Yes.

Mr. GRAY: Could you say as a businessman and a student in your industry, if these bankruptcies do not occur too often and if the banks are lending substantial amounts of money on which they are making very substantial amounts of earnings through interest, why the passage of this bill would lead to a serious reduction of credit.

Mr. ROBINSON: I would have to reply that you have pointed out if the growers' bills had been paid then the bank's position under section 88 has not been changed. Now, I am not here in defence of the bank, as you can well understand, but we do find this, with all the experience we have had—and I will leave it to Mr. Limoges to comment on this—that when a bankruptcy occurs we seldom find the situation where the whole range of creditors is not involved. The point with which we are concerned is what could easily happen to a processor's credit limits if there are changes in the Bankruptcy Act. This is the thing which would disturb us.

Mr. GRAY: So, if you are assured by students of these matters and other experts in these lines that this was unlikely to happen you would not have the same concern that you exhibit in your brief in respect of Mr. Whelan's bill.

Mr. ROBINSON: I cannot see how you are going to change either the Bankruptcy Act or section 88 of the Bank Act without it having a very serious effect.

Now, let us take a look at this first and then perhaps we can argue it. I cannot see how this can be done without affecting the credit situation. I think we all realize, particularly Mr. Whelan, the sponsor of the bill, that it is not the big processing companies that are too much involved here; it is the smaller companies, the newer ones coming along, and they would be the ones that might have serious difficulties in getting sufficient from the bank if there are any drastic changes made.

Now, these small processors in the areas in which they operate are just as essential to that area as the big giants are in the area in which they operate. I may get my knuckles rapped for using the words "big giants". But, no matter whether he is big or small he is playing an important part with the local farmers.

Mr. GRAY: Can you tell me why the farmers are bearing the brunt of establishing new firms in your industry?

Mr. ROBINSON: I have never said he was bearing the brunt. Who made this statement?

Mr. GRAY: Well, that is the impression I got. You indicated the problem would be most serious for a smaller and newer processor, the ones who have just started and who, in your opinion, if this bill was passed, would find it very hard to obtain credit. In other words, this would seem to me to indicate that if a small processor, that is, a new man, went bankrupt having obtained credit under section 88, then the farmer who presented him his crop would, in effect, bear the brunt of the problems of this new fellow getting started and not being able to make it.

Mr. ROBINSON: I think I can go along with that only a very short distance.

Mr. Limoges, in addition to being the president of the Quebec Canners Association is closely connected with the financing, much more so than I am, and I am going to ask him to pick up after I have made this comment on your question.

A processor who is going to operate in a given area will sit down and decide what his objectives are going to be, so many cases of peas, beans, corn or what have you, and then I would assume— and, this is where I would like Mr. Limoges to take over—this processor goes to his bank to arrange a line of credit for that year's operation based on his program. Now, if he just goes in there and it happens to be a sunny day and he has caught the fellow after a big meal and he says: O.K., I need \$100 million and gets it without any further ado than that I would think your point would be well taken.

I would now ask Mr. Limoges to add something to what I have said.

Mr. GUY LIMOGES (*President, Quebec Canners' Association*) (*Interpretation*): Mr. Robinson was saying a moment ago that my field was rather that of financing. I perhaps should mention that my particular field is chairman of the association of canners of Quebec and more concerns my relations with farmers concerning contracts of canning fruits and vegetables. Therefore, as a representative of the Quebec association I would rather wish to confine myself to the matter of contracts rather than to loans from banks.

Mr. Robinson is correct in what he says in respect of the small canners or conditioners, as we call them, in that they present a balance sheet and then obtain the amounts required in proportion to what is represented.

Mr. GRAY: Did you not express a view on page 2 of your brief, the third paragraph that there is ample provision in the farm products marketing act to permit satisfactory investigation of the financial responsibility of a processor? As you are no doubt aware, we had witnesses before us from all the provincial fruit and vegetable marketing boards and, on page 189, in response to a question by me, this was not possible at this time, in their view.

Mr. ROBINSON: I have referred, of course, in the brief, to the fact that under the farm marketing board the growers' representative is permitted to go in and examine books and if there is any reasonable doubt as to the integrity or status of that firm a licence can be withheld.

I have here in my hand copies of agreements for peas, tomatoes and other products under the Ontario board and I am sure that you are aware—I would be surprised if you are not—that there are provisions here in respect to what has been discussed. If I may, I will read the provision under "tomatoes":

Every processor shall pay to the grower the amount of the purchase price due and owing the grower for tomatoes delivered by the grower to the processor in each two weeks deliveries on the Friday of the week immediately following such two weeks period.

Each contract has definite clauses which does give, in my opinion—and, I will not say 100 per cent protection because nothing connected in business ever affords 100 per cent protection—reasonable protection.

In other words, if the grower does not make demands for his payment is he not a little lax in the very tools which have been put in his hands?

Mr. GRAY: What would the processor say to him if he asked for weekly payments?

Mr. ROBINSON: The processor would either have to pay him or he would be in trouble.

Mr. GRAY: Even if he was a smaller new man?

Mr. ROBINSON: This goes back again to faith in one another in the conducting of business. Now, faith sometimes can lead us down the garden path, but we all know these things are unfortunate and, as you know, they are not planned. We certainly would hate to see any grower hurt because of bankruptcy, and we are aware that it reflects on us; not only does it reflect on us, it hurts us. We do not like this any more than the grower does, but we feel there is a provision under the farm marketing act; perhaps it is not all being used as well as it might be or as fully, but these are things which we looked at and explored. I think this is much more practical for both the processor and the grower than any change in the Bankruptcy Act or Bank Act.

Mr. GRAY: How would greater licensing which you say is possible, help the growers of apples and potatoes who are not covered by the marketing boards in Ontario?

Mr. ROBINSON: This is true. There is a variation in marketing boards across Canada.

I am sorry we have not the witnesses from British Columbia and the Annapolis valley. However, there is no such thing as a processor going bankrupt in the Okanagan valley. Anyway, if a farmer has fruit the processor does not buy it from the farmer but from the farmer's agent. I believe this same thing applies here in Ontario in respect of asparagus. I do not believe in this case they make their payments direct to the farmers.

Mr. WHELAN: But this is a different thing because you can identify your fruit and asparagus. It is not processed to the same level. You are referring to the fresh markets.

Mr. ROBINSON: No, I am speaking of processed.

Mr. WHELAN: These are not processed apples to which you are referring. Asparagus, as a rule, goes in a freezer and is then packaged.

Mr. GRAY: Mr. Chairman, I would ask that Mr. Whelan await his turn as I would like to finish my questions.

Mr. ROBINSON: I hope you do not wear me out before his turn comes.

Mr. GRAY: I am sure Mr. Whelan will add a lot of useful information to the meeting by his questions. But, I take it from your last comment, sir, that you would agree with me when I suggest in every province of Canada there are great variations in what products are covered by what boards. As you know, some products are covered in Ontario and are not covered in another province, or vice versa, and some powers that are in effect in British Columbia by legislation may or may not exist in Ontario.

I want to direct your attention to a particular question, page 189. I asked Dr. Brown who brought the brief on behalf of the Ontario Growers Association this question:

They have no prelicensing powers; they do not operate any prelicensing or preselling?

The answer given by Mr. Brown was:

No. In connection with the licensing, may I ask Mr. Fisher to answer that because our association is not directly involved.

Then Mr. Brown made some comments, and ended up with saying:

We do not have the power to license.

I gather there is quite a sharp difference in point of view between your idea of what could be done in Ontario and what these people think.

Mr. ROBINSON: I see the point you are trying to establish here. I was here at the hearing when Mr. Brown and Mr. Fisher gave evidence. Possibly the answer is they are looking at the powers they have under their board and if they feel they need broader powers they can request them.

Mr. GRAY: Even with prelicensing is it not correct that if a fellow is licensed on January 1, with a guarantee as of September 1, his financial position must have deteriorated drastically by the time the crop was delivered.

Mr. ROBINSON: That is true. We recognize this. This could happen. But, let us take, for instance, the peas or beans that we are talking about. Suppose he is contracting in March for "X" acres. These peas are going to be harvested down in the Essex and Kent area in July. Now, he is certainly not going to wait until September and October to get his payment because under here he can go in two weeks afterwards and ask for payment, and if he does not get payment I would think something is going to start to happen.

Mr. GRAY: Well, why in Ontario has this problem arisen if all these people have the right to ask for such prompt payments?

Mr. ROBINSON: Why do they want the power to ask for it, you mean?

Mr. GRAY: Why do these people come here in support of Mr. Whelan's bill, saying it is needed if, through their contracts they are able to receive prompt payments? I will go further than this: if occasions have arisen in which farmers have not been paid for their entire crop or most of it why are these provisions in the contracts so useful?

Mr. LIMOGES (*Interpretation*): It may be because of those who have waited too long or who want to have a reasonable payment, whether they be paid once every week or once every two weeks, and if these people receive their payments every 15 days, let us say, I think they would not be satisfied with this procedure.

In respect of the growing of tomatoes in Quebec, our marketing board pays the farmers every two weeks under contracts, and, in the case of several companies, if certain farmers wish a certain amount for some reason in advance we are ready to give them that amount. There might be one farmer or no farmers who benefit from this privilege. Therefore, I do not see a serious problem here in respect of the farmer when they are paid every 15 days or so.

Mr. GRAY: I will continue on to several other questions and then I will turn the subject over to other members who have questions they want to ask. I am happy to accord the others here the same privilege of questioning. Let me ask this question: do you think it is possible to have a fund of the type you request on a national basis in view of divided constitutional jurisdiction in agriculture?

Mr. ROBINSON: I would think you would find that the growers in Prince Edward Island, the Saint John valley or the Annapolis valley, along with the various other areas, would like to have their fund confined to themselves. I would think a national fund would be much more desirable if it could be worked out. This is something which would have to be given a good deal of study.

Mr. GRAY: Your association has not had advice on the constitutional aspects of this?

Mr. ROBINSON: No, we have not because, as I say, our association as a national body has never been involved with negotiations between the processor and grower; this always has been done at the provincial level.

Mr. GRAY: I notice at page 3 near the end of your brief you compare the producer to a businessman. Are there really many businessmen who sell the entire efforts of their year's labour to one customer as the farmer sells to the processor?

Mr. ROBINSON: I appreciate your question and, believe me, I will repeat what I have said many, many times, not here but everywhere else, when I have had occasion to talk on this point. We have to have successful farmers in order to have successful processors. We like to look upon our farmers as business associates. We feel he is not waiting all year. I know what you mean; if he contracts for 100 acres of peas that is a good part of his farm and, as far as I know, it may be all of his farm. I know what you mean. If he contracts for a hundred acres that might be a good piece of his farm; it might even be all his farm. You are saying to me: if he has all his eggs in one basket, should we not put some extra handles on that basket.

Mr. LIMOGES: In the province of Quebec not more than one or two per cent have a contract with only one firm; they mostly divide their contracts.

Mr. GRAY: Are you aware that this is not the situation in other parts of Ontario? I know you suggested it would be dangerous to give preference to any particular creditor or class of creditor. Would you then oppose the continuance of the preference now given to wage earners?

Mr. ROBINSON: No. We were not considering that Bill C-5 touched the wage earner.

Mr. GRAY: I asked that because you are stating a general principle.

Mr. ROBINSON: No, I am talking about creditors in the sense of materials.

Mr. GRAY: Assuming your clients do sell their entire crop to only one processor, does that put him in the class of the manufacturer of labels and cans and so on?

Mr. ROBINSON: In a sense we are coming back to the man with all his eggs in one basket. Perhaps he has only one basket at his disposal; I do not know.

But certainly before he puts those eggs in that basket he has a moral right, as a farmer or a businessman, to make investigations to ensure that he is putting his eggs in a sound basket, not in one out of which the bottom is going to fall.

Mr. GRAY: What steps are available to him to make these investigations?

Mr. ROBINSON: If he has no other way of going about it, he can always walk into a lawyer's office, can he not?

Mr. GRAY: And he can walk right out again.

Mr. ROBINSON: I cannot imagine a man who is sceptical about credit not being able to obtain the information he requires.

Mr. GRAY: If a man walked into the office of a man who was the only processor and said, "Do you mind showing me your books so that I can see you are in good shape", do you think he is going to be told?

Mr. ROBINSON: Here I am at a disadvantage because the Ontario man would know this. But I am told they can go in and look at the books. The farmers marketing act gives that power.

Mr. GRAY: I am talking about the farmer. Do you think the individual farmer has himself the training to make this investigation?

Mr. ROBINSON: No, I would not say so. He probably would not know what he was looking at. I do not think he would do it. He would appoint someone to do it for him. I would not go in and do it because I would not know.

Mr. GRAY: Is it not correct to say that the bank has no right to give this information?

Mr. ROBINSON: Are you talking about the farmers going into the bank to find out what money the processor has on deposit or are you talking about his accounts receivable and payable in his own office? The bank cannot do anything about that.

Mr. GRAY: The banker of a processor often has a pretty good idea how his customer is doing financially, because he is lending money to him. You would agree, would you not, that if the farmer went to the banker as the potential source of information he would not get very far?

Mr. ROBINSON: I would rather the banker answer that.

Mr. GRAY: They have done so already.

Another potential source might be Dun and Bradstreet, but that is not too valuable. The processor might not want to tell Dun and Bradstreet's man about his situation.

Mr. ROBINSON: These things can be made difficult. It depends on the attitude of the party being questioned. I still feel—and I say this in all sincerity—that ways and means can be worked out and a great deal of the risk that has cropped up can be eliminated. However, I think this matter rests with the farmer; he is not exercising all the rights he has. I am even told that there are instances where the farmer has been given the cheque and has held the cheque, that he has not cashed it. What reason did he have for doing this?

Mr. GRAY: Maybe the processor told him he was in good shape.

Mr. ROBINSON: I would doubt that. I would be more inclined to think the end of the year was approaching.

Mr. GRAY: You make an interesting statement here. You say:

Other industries, such as the dairy and fish industries, have found a solution to this problem of payments.

Can you tell us what these solutions are?

Mr. ROBINSON: I believe Dr. McLean said himself that on receipts of raw fish they paid every two weeks, and I understand in the meat packing industry they are paid every week.

Mr. AIKEN: Mr. Robinson, I just have three or four questions to put to you. I will precede them by the statement that my concern about this bill has been that while it is stated that it is only to apply on bankruptcy, its effect will be immediate in connection with credit for both processors and producers. This is the background of my questions and this is the line along which I would like to ask these questions.

In your opinion, if this bill were passed as presented, would it have an immediate effect on the credit of the processor and of the producer?

Mr. ROBINSON: I do not know how you want to interpret the word "immediate". Do you mean if it went through now would it affect next year's credit?

Mr. AIKEN: Yes, rather than bankruptcy.

Mr. ROBINSON: I would certainly feel that if the bill were to be passed now, before processors were able to set up their line of credit from 1964 crops, they would find in some areas, because of this change, they would be facing a problem they have not had to face in previous years.

Mr. AIKEN: Would this affect the small processors more than the large?

Mr. ROBINSON: Very definitely. This is the whole point. The big fellow with plenty of financing has no problem. However—and I am very happy about this—he endorses what we are doing because he recognizes that we are doing it on behalf of the small man. We feel the small processor is essential to the community.

Mr. AIKEN: Is it not a fact that at least some of the money which the banks advance to processors on credit is paid to the producer in payment of his crops as they are brought in?

Mr. ROBINSON: Some of the credit under section 31 goes to pay growers.

Mr. AIKEN: I am trying to relate this to the growers.

Mr. ROBINSON: I would have to agree. I would certainly think that when he asks for his line of credit he is asking for money to do certain things, to buy goods, to buy cans, to buy labels and to pay wages.

Mr. AIKEN: And to pay the grower?

Mr. ROBINSON: I said to pay for goods and I meant by that the growers' product.

Perhaps Mr. Limoges would like to add something to what I have said on that.

Mr. LIMOGES: I think what you have said is correct.

Mr. McLEAN (*Charlotte*): It seems to me that the crux of the whole matter is section 88. It is a case of the bank coming in and asking the primary producer to put up collateral. You say the life blood of the food processing firm is the raw product of the primary producer, and I agree with that. We have to have fisherman in our business and we have to keep them going or we would not be in business. Do you feel it is fair that the primary producer, whom you have to have, should put up collateral for the processor? That is the crux of the whole matter as I see it.

Mr. KLEIN: I agree; that is the crux of the whole matter.

Mr. ROBINSON: Is there not another way of getting around this? Is he actually putting up collateral for the processor?

Mr. McLEAN (*Charlotte*): Yes, he is. When he goes into bankruptcy the end product belongs to the bank. The bank has paid the sugar people and the can people but not the producer; he goes on long term credit. A licence would

not be issued unless he had to make his payments to the primary producer within ten days or every week in other industries.

Mr. ROBINSON: I have said that I feel there is an area here in which negotiation can be conducted to overcome some of this risk.

Mr. McLEAN (*Charlotte*): Not only do we have to supply the fishermen with things they need but we have to pay them every week too. Even if the processors have to give an advance on the crop, as I imagine sometimes they do, could they not pay them every week just the same?

Mr. ROBINSON: I would certainly be inclined to think this should be looked at with the idea that something could be arrived at that would be more satisfactory than the present arrangement.

Mr. McLEAN (*Charlotte*): It seems to me that all the primary producer is asking is to be put on the same footing as the rest of them. If he was doing business in a business way and getting his payment every week, I do not see why they would need anything.

Mr. ROBINSON: Mr. McLean, I know you have experience of handling this sort of thing and the methods by which you pay for the product. Am I not correct in saying that the can manufacturers will put cans into warehouses for processors months before the cans will even be touched? Would you not say that they are also there for financing the processor? This is the whole point. If you start playing around with one, where do you quit?

Mr. McLEAN (*Charlotte*): I agree with that. We put cans in the warehouse seven months beforehand, but they are our cans; we make them. We do sometimes buy cans, we buy round cans; but then it is always 10 days.

Mr. ROBINSON: I am told that the can manufacturers will anticipate the number of cans they have to produce for the peak crop, let us say, in a certain area where they have four or five customers, and as long as they have the contract—not the money, the contract,—they will put in the cans.

Mr. Limoges, would you know about this?

Mr. McLEAN (*Charlotte*): But they still continue to own the cans.

Mr. LIMOGES: They put up the cans and deliver them months and months ahead.

Mr. McLEAN (*Charlotte*): But they retain ownership. Even if they do put them in, they retain the ownership.

Mr. THOMAS: Mr. Chairman, some of my questions have been partially answered but perhaps it will do no harm to get this information worded in a different way.

On page 2 of the brief it is suggested that the growers might do something to protect themselves by way of a levy on the goods which are furnished to the canners. I am not quite clear about this. Is the witness suggesting that the processors should set up this fund or is it suggested that the producer should do so?

Mr. ROBINSON: No, I had in mind that this would be like a growers' pool to which they would contribute to help to equalize any loss some of their members may be unfortunate enough to sustain.

Mr. KLEIN: To pay for their own losses.

Mr. ROBINSON: Yes. I am not saying you could not sell the processor on coming part way into this.

Mr. THOMAS: Have the processors given consideration to setting up a fund?

Mr. ROBINSON: I would not be able to answer that because I am not sure whether they have or not. But here again, I would say that if we work together we will find a solution to this. We have this bill in front of us. We know there are problems. We know there are unhappy situations.

Mr. THOMAS: Would Mr. Robinson say that the processors might be willing to guarantee these payments to producers or set up an organization for this purpose, and would that be preferable to this amendment to the Bankruptcy Act? Would an organization whereby the processors would guarantee these payments to the producers be preferable to an amendment to the Bankruptcy Act which might affect the credit of all processors?

Mr. ROBINSON: I would not be able to answer that question as openly and honestly as I would like until I have discussed it. I would not know.

Mr. THOMAS: In regard to the position of the strength of the producers' bargaining position as against the processors' and bankers' position, and that of others interested in the canning process, would Mr. Robinson say that a farmer who spends his time producing crops rather than on business arrangements and on business technicalities is in as favourable a position in the business world to protect himself against such things as bankruptcy as is a man who spends all of his day and all of his time in a business office dealing with business problems?

If I may depart a little here, I think this is the crux of the matter. Bill C-5 aims to provide protection for a producer on the same basis as protection is provided for a wage earner and as protection is provided for suppliers of building materials under the Mechanics Lien Act. I think we could admit, if I may speak a little on the side, that anything that interferes with the natural economic laws acts as an advantage to some and as a disadvantage to others. The question here is whether the passage of this bill would do us more good through protecting the primary producer than it would do harm through possible restrictions to credit. That is our point and that is why I am asking this question.

Does the witness feel that the producer who spends his time growing crops and not being associated with business has the same chance of protecting himself as the businessman who spends all day in an office and is trained in the field of business?

Mr. ROBINSON: I think all of us who have been in industry any length of time have seen a great many changes. Conditions that applied 20 years ago are quite different from those of today. I think growers are getting fewer in number and bigger in size, that they are more experienced and know their way around a great deal better than the growers of 20 years ago. I think this is good for the grower and I think it is good for the processor. We have always found the grower a pretty hard fellow to negotiate with. We have never found him wet behind the ears, if you want to use that expression. He knew what he was doing. The situations at which we are looking are unfortunate; they are matters about which none of us is happy. I would never have the effrontery to sit here and say that a farmer out in the back concession has the same access to credit information as a man sitting on St. James street or Bay street. Nobody in his right mind could say that. However, I say the information is there for them and it is their duty to find it.

Mr. THOMAS: I have one more question, Mr. Chairman.

Could Mr. Robinson say whether the protection of wages to wage earners, now contained in the Bankruptcy Act, has curtailed credit, and does he feel that the operation of the Mechanics Lien Act, which protects suppliers of building materials when new buildings are erected, has curtailed credit?

Mr. ROBINSON: I would not know. I am not trying to duck the question; I just would not know. You would have to ask someone who has a great deal more knowledge of these things than I.

Mr. THOMAS: I think it is an honest answer, Mr. Chairman. I doubt if anyone knows.

Mr. ROBINSON: Let me come back to a point you made. I would be very reluctant to see Bill C-5 enacted as an experiment, to find out whether it is going to work or not, because I think there are things there that could work the wrong way. I feel we can find a solution to this problem in some mutually satisfactory manner.

Mr. THOMAS: Mr. Chairman, would the witness agree, then, that in considering Bill C-5 we have to weigh any possible advantages against any possible disadvantages and come to a conclusion.

Mr. ROBINSON: Somebody has to do so, yes.

The CHAIRMAN: Mr. Cameron.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Robinson, I would like to come back again to the question Mr. Thomas asked you just now with reference to your suggestion on page 2 of your brief about the establishment of a pool for the rescue of growers who have been damaged by the bankruptcies of processors. In your opinion, would the members of your organization be prepared to contribute a levy to the establishment of such a pool.

Mr. ROBINSON: I had not been thinking of it from the standpoint of a levy from the members of our association; I was thinking of it from the standpoint of the growers themselves doing something to spread any loss. You are just asking 50,000 growers to pick up the chips from 1,000 processors. I am not saying the processors will not sit down and talk over some ideas with you. I am not saying they will not; I do not know. We have not had an opportunity to go into these things as deeply as I would like.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Then can you answer this question? You and your organization came to oppose Bill C-5. We, of course, apologize to you for the inconvenience you were put to through not being able to come on the day it was first suggested. However, you were able to overlook that inconvenience, and the fact that you have done so and that you have come today suggests to me you were anxious to come here and oppose this bill. Would you and your organization come with equal alacrity to oppose legislation to enforce a pool to which processors and growers would contribute?

Mr. ROBINSON: I think I would have been better to stay at home! As a matter of fact, I live in Ottawa so it did not inconvenience me at all. I do not know how to answer your question.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In your opinion, Mr. Robinson, is it fair to ask the growers to assume full responsibility for rescuing their members from the bad judgment or the bad faith of processors without having the general body of processors contributing to a protective fund.

Mr. ROBINSON: If you were buying group automobile insurance or group life insurance would you expect the automobile manufacturer to participate? Would you expect anyone to participate in the plan other than those who set up the plan in order to protect themselves! Would you think that the automobile manufacturer would do this? I believe there are little groups all around the country who get together and say "We'll just have our own little insurance policy among ourselves." I think this is quite a common procedure. Surely you do not expect the man from whom you buy the car or the man who manufactures the car to chip in on this deal.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No, but in that case we expect and receive also the support of the public authorities through legislation which prevents the purchasers of cars from being victimized by producers of the cars. I am suggesting perhaps the same principle should be introduced with regard to producers vis-a-vis the processors. Policing in

this way would enable you to call on the policemen to act if they are not prepared to act themselves.

Mr. ROBINSON: We do not want to see growers victimized; this is something no processor wants to see.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I notice you once or twice suggested that there was an area for negotiation in this field. Would you not agree that there is perhaps an area for legislation in this field too? Quite obviously the negotiations have not been successful or we would not have this bill before us.

Mr. ROBINSON: I would think legislation might be the outcome of negotiations between industries. It might not be in the form of the present bill. I am sure, gentlemen, that we are both searching for the same thing. You want to see the grower protected; we do not want to see him harmed. Surely there is common ground on which we can get together without upsetting all the credit structure of the country.

Mr. VINCENT: I wanted to ask some questions in French, but I will proceed in English.

As I said at the beginning, the principle of this bill is accepted by everyone. There is a problem, however, and we should find a solution to protect primary producers. This brings me to my first question.

Mr. ROBINSON, are you aware of the fact that all farmers' associations in Canada are supporting the principle of the bill and, furthermore, that they are supporting the bill in its present form? Are you aware of the fact that they want this bill adopted in this present session? Are you aware of this?

Mr. ROBINSON: This would not surprise me.

Mr. VINCENT: You agree with the principle, and you would like to have something done about this problem by the government or by negotiation?

Mr. ROBINSON: What do you mean saying that I agree with the principle?

Mr. VINCENT: You agree that there are problems?

Mr. ROBINSON: We recognize the problems, yes.

Mr. VINCENT: And you would like to see something done about it by legislation or negotiation?

Mr. ROBINSON: Preferably by negotiation.

Mr. VINCENT: As long as we cannot find some other way of protecting the primary producer I will support this bill, and I think the majority of the members of the committee will support it. However, if something else can be suggested, we should have it right away. For example I was reading in the brief that in British Columbia there is a clause in the contracts of the primary producer with the processor which provides the grower with security for an unpaid balance after September 15; and this clause was brought into effect after a processor had gone into bankruptcy.

Mr. ROBINSON: Yes.

Mr. VINCENT: I would like to ask some questions of Mr. Limoges. Would it be possible in the relations between farmers and processors and the companies for the contracts to include a clause which will give a privilege to the primary producer to have security on his product after a certain date? Is it possible to include such a clause in each contract for produce which is not paid before a certain date?

Mr. LIMOGES: May I ask you a question on this? There are two kinds of contracts, one which is between the marketing board and the association and the other between a firm and a grower. Are you talking about contracts between firms and growers?

Mr. VINCENT: Yes.

Mr. LIMOGES: I was not expecting a question of this type, therefore I do not know what the firms would say about it. I can tell you that most of the contracts include a clause to the effect that if any grower needs an advance it is given to him.

Mr. VINCENT: Yes, for advance money, but I am talking of bankruptcy.

Mr. LIMOGES: I would have to ask our members.

Mr. VINCENT: This type of clause has solved the problem of British Columbia now, a problem which has arisen here and has resulted in this bill.

Mr. LIMOGES: I will discuss this with our members.

Mr. VINCENT: I have another question. You spoke in the brief about the insurance plan. Would it be possible for all the food processors' associations, the Canadian, Ontario, western and Quebec associations, to group together as for example the packers grouped together? For hogs they were charging one-half of one per cent on the price of hogs so that if one hog or two hogs were dead in the yard or the market they were able to give to the farmer the total amount of money which the hog would have brought on the market. They have created a fund of many millions of dollars for this purpose. When the fund is big enough to reimburse all the farmers who have to support an accident like that, they stop collecting this half of one per cent; and when the fund is low they start it again. Therefore, one year they may not collect any money and another year they may start collecting again. They keep enough money to provide for all these losses. This is not exactly the same subject as bankruptcy, but it is one thing that was done in this business and all the farmers have profited from it. Would it be possible to create some kind of organization of all these companies which would provide a fund especially for bankruptcies in order to protect the primary producers? What do you think of that, Mr. Robinson?

Mr. ROBINSON: I would only be able to answer it in this way. We would have to put the problem to the associations and the associations would put it to their members to see what could be done. I am sure neither Mr. Limoges, or I, whatever our personal feelings might be, would be able to say "yes, this is the answer." I think there are many areas that can be examined, and this is one of them.

Mr. VINCENT: Mr. Chairman, as I said a few minutes ago, we have to do something right now to help the primary producer, and if we do not have anything else in front of us, then we will have to support the bill in its present wording. Something has to be done, and now is the time for legislation on it.

Mr. PASCOE: Mr. Chairman, I had some questions with regard to page 2 about the possibility of insurance or a levy, but I think most of the questions have been answered. Perhaps I could just follow it up to a certain extent.

As other witnesses have said, we are all very much in favour of the principle of more protection for the producer, and I was quite impressed with Mr. Robinson's statement that he thought it was possible to find a solution to the problem in a mutually satisfactory manner. I believe those were his words. I just wonder if he could explain what contract there could be between the processors and producers. What sort of direct contract could be worked out?

Mr. ROBINSON: It would be most difficult to try to have individual growers sit down with individual processors. I think this is something which must be done through growers' bodies, such as the marketing boards or the council, and our provincial associations and the national association. I think this is where this would have to be done.

Mr. PASCOE: But there is a direct contact somewhere?

Mr. ROBINSON: Yes.

Mr. PASCOE: May I follow that up a little more?

Page 3 shows that the purchases of fresh fruits and fresh vegetables for 1961 amount to around \$51 million or a little more. As a western wheat man, I just received a cheque yesterday for some wheat from which a one per cent levy was taken. That levy against the grower, which the grower pays, is taken out before he gets his cheque. A one per cent levy on this year's figure of \$51 million would be \$500,000. It seems to me there should be some way worked out between the producer and the processor whereby they would perhaps pay half of one per cent into a fund which would produce half a million dollars a year, a fairly substantial sum, for the protection of the producer. Do you not think that could be worked out?

Mr. ROBINSON: I think all these things can be worked out.

Mr. PASCOE: The report from 1961 shows \$51 million for fresh fruit and vegetables and \$81 million for metal containers, glass containers, cartons and so on. Is that an average year or is it an exception?

Mr. ROBINSON: I would say that was an average year. It must be remembered that I have used only the Canadian-grown fruits and Canadian-grown vegetables here. There are always some imported fruits and vegetables, but I did not include them.

Mr. PASCOE: There is another question which I would like to ask in regard to purchases of metal containers and glass containers. How are those manufacturers paid? When are they paid?

Mr. ROBINSON: Mr. Limoges, I believe, could answer this because he is a buyer and I am not.

Mr. PASCOE: Is it cash on delivery?

Mr. LIMOGES: No, it is mostly 30 days, and 10 days one per cent.

Mr. PASCOE: There is one other question which I asked before but it seems that the answer is a little different on page 3 where it is stated that:

The processor, in many instances, supplies the seed or plants and, through his field men, provides the grower with a program for fertilizing, spraying and crop control.

Is that the general practice?

Mr. ROBINSON: Yes. In the province of Quebec that is the general practice. We do supply the seed and they are retained at the end of the season.

Mr. WHELAN: Mr. Chairman, first of all I would like to ask if the witness can give me any idea how many companies who buy the 1,130,000 tons of fruit and vegetables operate under section 88. Do you have any idea?

Mr. ROBINSON: I do not know. I would think the vast majority.

Mr. WHELAN: The large majority of the big companies do not operate under section 88, and they would be the big users. I thought you might have a breakdown.

Mr. ROBINSON: No, I have not.

Mr. WHELAN: Have you checked the accuracy of the number of times a process has gone into bankruptcy when, in the year of bankruptcy, his pack was increased?

Mr. ROBINSON: This would have to be checked.

Mr. WHELAN: We have checked several bankruptcies and we have found that in the year of bankruptcy their packs have increased nearly always by 50 per cent over any other year. Therefore, more assets would have been accumulated for the bank in that year.

You said it was easy for marketing boards to check with the banks. I do not know if you are aware of the evidence which we have heard here contrary to this. We heard that in the case of the main bankruptcy in Ontario last year there was a letter written to the marketing group by the bank shortly before the bankruptcy to the effect that the firm that went into bankruptcy was in good financial shape. This letter was written by the bank which put the firm into receivership. Therefore, I do not think what you say is true.

With regard to cans, do you not think this is a different product? You say that these people would be requesting this same protection under section 88, but cans are not perishable and cans can be identified, therefore the manufacturers can retrieve their stock because these cans can be identified by their serial numbers.

Mr. ROBINSON: What good would that be?

Mr. WHELAN: They could sell them to someone else because they are mostly standard-pack cans.

With regard to a fund, I cannot see why we as primary producers should set up an insurance fund for the inefficient processors just to make them more inefficient. If the growers were to set up such a fund the inefficient processors would know that if they went into bankruptcy someone would look after their negligence and inefficiency. I think this would be the feeling of a great many primary producers. If you as processors want to set up a fund for your inefficient partners in this game, I can see the point because it would be an advantage to your organization. However, I do not think you will do that until something like Bill C-5 is passed to force you to do so, to force you to guarantee the credit of the financial institutions of this nature.

Mr. ROBINSON: Would you not think, Mr. Whelan, that the point Mr. Pascoe touched might be the answer if it were explored? In British Columbia they have found an answer to this by securing the unpaid amounts as of a certain date.

Mr. WHELAN: I am not sure what they have done in British Columbia but I do know that we have a letter from the British Columbia association of agriculture endorsing Bill C-5 to take care of primary producers. I am aware and I am sure you are aware that they obtained legal advice before they endorsed Bill C-5. They did not come here and say "We are going to endorse it because we think it is a good thing." I know how their organizations are set up and I know they obtain legal advice.

I would say this also, Mr. Chairman. In Ontario, the licensing system is a fragile way of trying to protect the primary producers. I am aware of this because I happened to sit on a board in Ontario which recommended that a licence be not given to a buyer of a licensed product, but it was given over and above the recommendation of the licensing board. This sort of thing has happened in a good many cases. I know a processor of primary products who went into bankruptcy and I know that his wife now has a licence and is processing fruit and vegetables in the Niagara area.

Mr. ROBINSON: You are suggesting that licensing is not as rigid and strict as it should be?

Mr. WHELAN: It is not rigid and strict.

I see no way in which Bill C-5 would impair the operation of the financial institutions, because these figures are minute in comparison with the \$131 million with which they are dealing. They are not going to cancel this overnight when they are making \$60 million a year. The losses have been negligible to them but they have meant a great deal to the primary producers.

Mr. RYAN: To your knowledge, Mr. Robinson, have the processors approached any insurance company, such as Lloyds of London or similar com-

panies, with a request that they insure the present loans that processors obtain under section 88 of the Bankruptcy Act against bankruptcy or insolvency?

Mr. ROBINSON: As far as I know, there has been no move in this direction.

Mr. RYAN: As far as you know that field is entirely unexplored?

Mr. ROBINSON: As far as I know, yes.

Mr. RYAN: Do you believe that the processors would object to paying an insurance premium for such insurance by, say, a deduction from their loans under section 88 of the Bankruptcy Act at the time they obtain the loans, this premium to be put into a fund to pay off the loan in full in the event of insolvency of the processor? Would they object to half of one per cent or one per cent being taken off?

Mr. ROBINSON: I would like to transfer that question to Mr. Limoges who is a processor. If any of these things are done, no matter at what level, they have to be built in to the price somewhere.

Mr. LIMOGES: I think this question will have to be put to our members. We will be able to give an answer later when it has been put to them.

Mr. RYAN: You would not like to give an answer now?

Mr. LIMOGES: No.

Mr. ROBINSON: No.

Mr. RYAN: Would you agree, Mr. Robinson, that if this bill went through it would not hurt the credit of the big processors in the industry, but just the shaky ones?

Mr. ROBINSON: From what information I have had, I think the large corporate bodies feel it would not affect their credit at all.

Mr. RYAN: Then it is just the shaky ones who are worried about it?

Mr. ROBINSON: They may not be shaky; they may be of a medium size and trying to operate on \$½ million credit.

Mr. DOUGLAS: They are trying to operate on someone else's credit.

Mr. RYAN: Would you agree it would be likely to be the borderline companies that would be affected?

Mr. ROBINSON: I cannot help but feel personally—and I cannot speak for the industry—that it would be a hardship to the smaller, less well financed operators.

Mr. RYAN: Do you feel these people are people who should be shaken out of the industry?

Mr. ROBINSON: That is a little difficult to answer. I would think that could be so.

Mr. RYAN: What sort of operators have caused this trouble? Give an analysis of what seems to have created this situation.

Mr. ROBINSON: You might find one set of conditions that has brought about hardship one year and an entirely different set of conditions the next year.

Mr. RYAN: What about your own experience?

Mr. ROBINSON: I am not a processor. I never have been a processor. That is why I find it so difficult to answer some of the questions. I am only employed as the manager of the national association.

Mr. RYAN: Is this a tightly knit association or rather a loose one?

Mr. ROBINSON: What do you mean?

Mr. RYAN: What is the service you render to the processor? Maybe that would be a better way to put it.

Mr. ROBINSON: Our service to the processor is on all types of federal legislation affecting grades, containers, food and drug regulations, import-export, transportation costs, quality control, sanitation in plants, and things of this nature.

I think I prefaced my remarks at the outset this morning by saying the area in which you are dealing here, in negotiations, is an area within the province. None of these contracts is a national contract; they are down at the provincial level.

Mr. RYAN: But the Bankruptcy Act, of course, is a federal act.

Mr. ROBINSON: The Bankruptcy Act is national; this is not.

Mr. RYAN: Has your organization been giving consideration to this problem for any length of time or has it just come to you recently?

Mr. ROBINSON: It has only come to us since the introduction of Bill C-5.

Mr. RYAN: I had gained the impression earlier that you told Mr. Thomas that the association would be unwilling to set up a fund because maybe it would be too much bother for it or it may be unable to handle such a fund. Is this the case or is it not? Would your association be able to handle such an indemnity fund?

Mr. ROBINSON: If such a fund was created it would not be handled through the association, if by handling you mean the mechanics of receiving the contributions and paying out. I think this would be done through whoever underwrites the fund.

Mr. KLEIN: Could you tell us if there is a breakdown, percentage-wise, of the prime material that goes into the finished product. Do you break it down so much for material, so much for work, so much for overhead and so on?

Mr. ROBINSON: You are talking of a cost factor breakdown?

Mr. KLEIN: Yes. I would like to know the percentage of the primary producers' product in your finished product.

Mr. ROBINSON: It will vary. I will just give a very rough guess and say that in the factory cost of the end product the raw product will vary anywhere from 20 per cent to 30 per cent of that cost. This would be my guess.

Mr. KLEIN: Twenty per cent to thirty per cent? What about the workmen? What about the labour? What is the cost of labour?

Mr. ROBINSON: The management and labour, if I remember my figures correctly, including administration and warehousing, is grouped into one figure which comes in roughly at around 20 per cent or 25 per cent.

Mr. KLEIN: And materials?

Mr. ROBINSON: Materials, cans, cartons, labels—pretty soon you are going to say to me that it does not add up to 100 per cent.

Mr. KLEIN: No.

Mr. ROBINSON: I have always said very roughly—and I do not think I am too far out, but Mr. Limoges would know better than I—that our raw product was 20 per cent to 25 per cent or 30 per cent of the factory cost of the finished product. That is for the cans, cartons and labels, which would represent roughly a third. Administration, wages in the factory, and the warehouse cost would be the balance.

There is one point I would like to make if I am not out of order.

The CHAIRMAN: Are you answering Mr. Klein's question?

Mr. ROBINSON: I am answering another question.

The CHAIRMAN: Go ahead.

Mr. ROBINSON: If a processor, even a shaky one, were shaken out through some more strict enforcement of regulations, I think we would find whenever this did happen that all the growers in that region would be affected. I think we have to realize this. I think also, gentlemen, that it is just one of the things to which serious consideration should be given when Bill C-5 is being considered. Is it going to result in that processor's growing more of his own product? This might be something which you would want to look at carefully.

I still feel there is a better way to solve these problems.

Mr. KLEIN: May I take it that approximately one-third or very nearly one-third—between 25 per cent and 33 $\frac{1}{3}$ per cent is contributed by the primary producer to the end product?

Mr. ROBINSON: The value of the product, yes; that would be contributed. You mean if it was never paid for?

Mr. KLEIN: Your argument right through your evidence seemed to amount to two things. First, the terror or fear that this legislation is going to open the door to destroy section 88.

Mr. ROBINSON: Yes.

Mr. KLEIN: And, secondly, that it will affect credit and do more harm than good.

Mr. ROBINSON: This is what we think.

Mr. KLEIN: Do you not think, if we were to give protection to the primary producer in this case, that the bank and the processor would adjust to it because the processor would then be a more solid businessman and would be obliged to put more of his own money into the project if this money was given to the primary producer?

Mr. ROBINSON: It could be so.

Mr. KLEIN: You do not think so?

Mr. ROBINSON: It could be.

Mr. KLEIN: Do you not think the processor would be obliged to put more capital, more of his own money into the business rather than continue to toil along on the sweat of the farmer?

Mr. ROBINSON: I do not know whether it would or not.

Mr. KLEIN: You know the workmen and the salesmen have protection against section 88, which did not destroy section 88 at the time that was involved.

Mr. ROBINSON: Yes.

Mr. KLEIN: When you speak about the farmer not being wet behind the ears, would you not say that even in the best of business circles with the best of information, the best of legal opinion, firms do get caught in bankruptcy.

Mr. ROBINSON: Yes, very definitely.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you not feel that the primary producer has priority rights in the case of bankruptcy of a processor because, after all, he is the one who serves humanity best, through the middleman, because he provides consumer goods that are necessary to life. Do you feel the primary producer has priority rights because he is the one who benefits humanity most by providing the consumer goods necessary to life?

Mr. ROBINSON: To a certain extent, yes.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you know that credit advanced to the consumer and to the processor is merely script money and that the banks do not take any risks because they lend their customers' money as was explained?

Mr. ROBINSON: The answer to that is no.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you not feel that if the banks were to restrict credit by virtue of the adoption of Bill C-5, then parliament could or should transfer the privilege of creating credit or script money to the Bank of Canada only by increasing the rate to 100 per cent from the present rate?

The CHAIRMAN: Mr. Côté, I believe I should intervene at this point. I do not believe the witnesses who have come here to represent processors' associations are capable of answering those questions at this time.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): I admit they are difficult questions.

The CHAIRMAN: I do not believe this type of question is within the competence of the witness. It is not for this purpose that the witnesses have come here today; they have come here to give their views on Bill C-5, which is under discussion at the present time. I would suggest it would be more in order to put these questions next Friday when we will be studying the bill clause by clause.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): May I add a personal view? Is it not obvious from all the questions that have been put to the witness that primary producers should be protected by the adoption of Bill C-5, Mr. Whelan's bill, because it is a ridiculous thesis that bankruptcies are essential for the proper operation of the economic life of this country?

The CHAIRMAN: Would it be in order for me to ask a very short question?

Can you tell the committee, Mr. Robinson, how processors would feel if legislation were enacted which required the processors to produce proof that the grower or the primary producer had been paid, and if it was incumbent upon the banks to obtain this information before loans could be made under section 88?

Mr. ROBINSON: I do not know.

The CHAIRMAN: For instance, if before the bank could make a loan under section 88 to the processor, proof of the grower having been paid or of the grower having waived his right was required, what would be the feeling of the industry?

Mr. ROBINSON: I am just wondering how the processor—

Mr. WHELAN: Perhaps Mr. Robinson will allow me to answer that for him. If Bill C-5 is passed they will do that.

The CHAIRMAN: I would like to know what the processors would feel. I do not want to intrude into the debate, but I feel it is a question which is useful.

Mr. GRAY: It is a constructive question.

The CHAIRMAN: It would be useful for us to have the industry's feelings about this.

Mr. ROBINSON: In order to give the industry's feeling on that I would have to go back to the industry for their views. I do not think I could answer that off the cuff.

The CHAIRMAN: Are there any further questions?

Mr. WHELAN: May I make just one comment? I will have a written brief in the office on Monday.

The CHAIRMAN: Mr. Whelan suggests that he will send us a copy on Monday of the evidence he wishes to give, and we will be discussing the bill clause by clause next Friday. At that time, if you have evidence you wish to give, I think the committee would be glad to hear you, Mr. Whelan.

We will adjourn to the call of the Chair.



(HOUSE OF COMMONS

First session—Twenty-sixth Parliament)

1963

STANDING COMMITTEE

ON

CANADA.

BANKING AND COMMERCE

(*Chairman:* EDMUND ASSELIN, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

(FRIDAY, DECEMBER 13, 1963)

Respecting

(Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing)

INCLUDING THIRTEENTH REPORT TO THE HOUSE)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

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Asselin (<i>Richmond-</i>	Habel,	Olson,
<i>Wolfe</i>),	Hahn,	Otto,
Bell,	Hamilton,	Pascoe,
Cameron (<i>Nanaimo-</i>	Irvine,	Ryan,
<i>Cowichan-The Islands</i>),	Jewett (Miss),	Rynard,
Chaplin,	Kelly,	Sauvé,
Chrétien,	Kindt,	Scott,
Côté (<i>Chicoutimi</i>),	Klein,	Skoreyko,
Crossman,	Lloyd,	Tardif,
Douglas,	Mackasey,	Thomas,
Ethier,	Matte,	Thompson,
Flemming (<i>Victoria-</i>	McLean (<i>Charlotte</i>),	Vincent,
<i>Carleton</i>),	Monteith,	Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, December 11, 1963.

Ordered—That the name of Mr. Alkenbrack be substituted for that of Mr. Nesbitt on the Standing Committee on Banking and Commerce.

THURSDAY, December 12, 1963.

Ordered—That the names of Messrs. Mackasey, Matte, Ethier and Crossman be substituted for those of Messrs. Macaluso, Pilon, Boulanger and Basford respectively on the Standing Committee on Banking and Commerce.

Attest

LÉON-J. RAYMOND,
The Clerk of the House.

REPORT TO THE HOUSE

DECEMBER 16, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

THIRTEENTH REPORT

Your Committee has considered Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), and has agreed to report it with the following recommendations:

Your Committee has heard evidence on Bill C-5 from farm organizations and other interests and is of the opinion that the evidence presented to the Committee has underlined the necessity of legislative action to achieve the purposes of the Bill, and has demonstrated that primary producers—especially primary producers of agricultural products—suffer genuine hardship, have a legitimate grievance, and need protection beyond that now available in the event of bankruptcy of the processors of their products.

Your Committee therefore recommends to the Government that the grievances disclosed by its study of this Bill be dealt with in appropriate amendments to the bankruptcy act and other relevant legislation at the next Session of the House.

A copy of the Minutes of Proceedings and Evidence respecting the Bill (Issues 1 and 2, and 4 to 9 inclusive) is appended.

Respectfully submitted,

EDMUND T. ASSELIN,
Chairman.

(NOTE: The Eleventh and Twelfth Reports deal with Private Bills in respect of which no Proceedings were published.)

MINUTES OF PROCEEDINGS

FRIDAY, December 13, 1963.

(19)

The Standing Committee on Banking and Commerce met at 9.00 a.m. o'clock this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grace*), presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de-Grace*), Asselin (*Richmond-Wolfe*), Bell, Cameron (*Nanaimo-Cowichan-The islands*), Côté (*Chicoutimi*), Crossman, Douglas, Ethier, Flemming (*Victoria-Carleton*), Gelber, Gray, Irvine, Mackasey, Matte, Morison, Otto, Pascoe, Ryan, Rynard, Thomas, Vincent, Whelan—(24).

The members resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

On motion of Mr. Cameron, seconded by Mr. Gray,

Resolved,—That this Committee go into closed session to discuss its report to the House.

Sitting *in camera* the Committee proceeded to discuss the form of report which it should present to the House.

The Committee then resumed sitting in open session.

On motion of Mr. Gray, seconded by Mr. Vincent,

Resolved,—That the Supplementary Submission of the Canadian Bankers Association and the brief prepared by Mr. Whelan entitled "Memorandum on the Constitutional Validity and Other Aspects of Bill C-5" (*See Appendices "A" and "B"*).

The Chairman read into the record the report to the House, which is as follows:

The Standing Committee on Banking and Commerce has the honour to present its

THIRTEENTH REPORT

Your Committee has considered Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), and has agreed to report it with the following recommendations:

Your Committee has heard evidence on Bill C-5 from farm organizations and other interests and is of the opinion that the evidence presented to the Committee has underlined the necessity of legislative action to achieve the purposes of the Bill, and has demonstrated that primary producers—especially primary producers of agricultural products—suffer genuine hardship, have a legitimate grievance, and need protection beyond that now available in the event of bankruptcy of the processors of their products.

Your Committee therefore recommends to the Government that the grievances disclosed by its study of this Bill be dealt with in appropriate amendments to the bankruptcy act and other relevant legislation at the next Session of the House.

On motion of Mr. Gray, seconded by Mr. Thomas, the report was unanimously adopted.

Ordered,—That the Chairman present the Report to the House.

The Chairman thanked the members for the co-operation given to him during the lengthy consideration of this Bill.

At 10:15 a.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, December 13, 1963.

The CHAIRMAN: Gentlemen, we will now resume consideration of bill C-5, an act to amend the Bankruptcy Act.

Could I have a motion to print as an appendix the supplementary submission of the Canadian Bankers' Association and the memorandum on the constitutional validity and other aspects of Bill C-5, as submitted by Mr. Whelan.

I believe both the supplementary submission and the memorandum on the constitutional validity and other aspects have been distributed to members of the committee.

Mr. GRAY: I so move.

Mr. VINCENT: I second the motion.

Mr. THOMAS: I second the motion.

The CHAIRMAN: It is a dead heat between Mr. Vincent and Mr. Thomas. All those in favour? Contrary, if any?

Motion agreed to.

The CHAIRMAN: Shall clause 1 carry?

Mr. GRAY: Mr. Chairman, I believe when we were meeting in closed session we adopted a report; would it not be appropriate for you to put on the record the formal report on this bill which we have adopted at this time, and then perhaps someone may wish to comment on it?

The CHAIRMAN: Yes. It was agreed at a committee meeting held in camera a few moments ago that this committee would submit the following report in connection with bill C-5 to the house.

Some hon. MEMBERS: Dispense.

Mr. GRAY: If it is not read out it will not go on the record. I think it should be read into the record.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: I will read it:

(See *Minutes of Proceedings*)

The meeting is now open for discussion.

Mr. GRAY: Mr. Chairman, I may say that in my own opinion the procedure we have followed in adopting the report you have just read to us I think, the best way we could choose at this time to bring about a more speedy and positive solution to the definite grievances that have been demonstrated to us in the evidence to date before this committee. In my opinion at least I think it will lead to some effective action at the earliest possible date.

At this time I think it would be only right for me and I think for the whole committee to pay tribute to our colleague, Eugene Whelan, for having presented this bill to the house and to have put it forward in such an effective and forceful manner before this committee. I think we should recognize that through his efforts he has brought about something which I am convinced will soon end in a definite and positive solution to this problem that is concerning so many primary producers in our country.

Mr. THOMAS: Mr. Chairman, I would like to agree with the sentiments which have been expressed by Mr. Gray and to say it has been a pleasure to work in this committee with representatives from the rural ridings and those

representatives of all parties who have taken a special interest in agricultural matters. They have done their best to sift through the evidence that has been submitted, and were unanimous in this report.

We certainly hope the government will find it possible to bring some relief to the farmers who are caught in the bankruptcy proceedings of processors who handle their products.

Mr. GRAY: Mr. Chairman, on a question of order, it occurred to me I should have terminated my remarks by moving the adoption of the report which you read, which I inadvertently did not do; therefore, I propose to make up for this by so moving at this time.

Mr. THOMAS: I second the motion.

The CHAIRMAN: It has been moved by Mr. Gray and seconded by Mr. Thomas that the report be adopted.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I would like to add my commendations to Mr. Whelan in respect of this project of his. It is stubborn creatures like Mr. Whelan who get adequate legislation placed on the books and we should pay tribute to him for at least the limited success he has had in this case.

Mr. WHELAN: Mr. Chairman, as sponsor of this bill may I say that the proceedings of this committee have been very enlightening to me. I have learned a great deal about bankruptcy and improved my knowledge in respect of procedures. It has been most educational.

I do have the utmost feeling of confidence, whether it be in Bill C-5 or by some other means, that something will be done to correct this situation. I would like to thank the members of the committee for their co-operation in this matter.

The CHAIRMAN: Gentlemen, in the warm spirit that has been prevailing in this committee for the last little while I would like to join as well and thank the committee for the close co-operation it has given the Chair in respect of the sometimes difficult procedural points with which the Chair has had to deal.

You gentlemen have been most diligent in the discussions. As you realize we have had several meetings in regard to this particular bill. We have been sitting for some months now. We have heard a great number of witnesses.

May I say that at all times all members of the committee have given me the very closest co-operation and I would like to put on the record my appreciation for this.

If there is not anyone else who would like to comment at this time I would entertain a motion.

Mr. GRAY: I beg your pardon, Mr. Chairman, but are you going to put my motion to a vote?

The CHAIRMAN: I am sorry, Mr. Gray. Gentlemen, we have a motion before us.

Mr. Gray has moved the adoption of the report.

Mr. THOMAS: And I seconded the motion.

The CHAIRMAN: Are you ready for the question?

Mr. RYAN: Mr. Chairman, in respect of the motion should you not start to call the bill clause by clause?

The CHAIRMAN: I think the report covers that.

Are you ready for the question?

All those in favour? Contrary if any? It is unanimously adopted.

Motion agreed to.

Mr. WHELAN: Mr. Chairman, I have just one more comment to make, *bonne santé à tous*.

The CHAIRMAN: May I wish you all a happy recess during the holiday period.

APPENDIX "A"

Supplementary submission of the Canadian Bankers' Association to the Standing Committee on Banking and Commerce of the House of Commons, Ottawa, Respecting Bill C-5—An Act to Amend the Bankruptcy Act

Statistics

When we appeared before the Committee on July 26th last, the banks were asked to submit statistics on their lending under Section 86 and Section 88 of the Bank Act to processors who purchase from primary producers. For this information the Exhibit attached shows the banks' experience during the period 1960/62 inclusive.

One of the problems in collecting these statistics was to determine who was a "producer". This definition problem can best be illustrated by indicating the kind of question which arises in the following industries:

- (a) Is a fishing company which owns its own trawlers and processes its own fish a producer or a processor?
- (b) Is a lumber company which cuts sufficient timber from its own limits for, say, 70% of its requirements, a producer or a processor?
- (c) Are steel and aluminum companies which are vertically integrated from the mine to the final production of metal producers or processors?

The important point is that the financing of the purchases from the above types of companies might be affected by Bill C-5 if the companies were ruled to be producers. To gather our statistics we kept in mind that the purpose of Bill C-5 is to protect those in the front line of primary resource production. Nevertheless, in practice there are cases where we found it impossible to make a clear distinction between producer and processor.

The wide variety of "processing" industries borrowing under Section 86 and Section 88 of the Bank Act will be noted from the statistics herewith which also indicate the general importance of this form of security in extending bank credit.

Credit Information

In the course of our preparing to give further evidence before the Committee, we were of course conscious of the fact—and our legal advisers have emphasized the point—that a bank is under a legal duty arising out of its relationship with its customers to maintain secrecy with respect to the affairs of each customer and that it is not permissible therefore for a bank to disclose details of the financial position of a customer of the bank—as in the case of a request by a producer for particulars about the affairs of a processor—unless that customer specifically authorizes disclosure of Balance Sheet figures.

Loss of Identity of Products

Some members of the Committee enquired about the legal aspects of the loss of identity of products in the hands of a processor or dealer as in the McClean Grain case referred to by Mr. K. A. Standing in the brief he presented on behalf of the Ontario Soya Bean Growers' Marketing Board.

The fact that a primary producer's products may lose their identity when delivered to an elevator or to a processor is only of importance when a question arises as to whether the products were delivered under a contract of sale or under a contract of bailment. If, as is generally the case, the contract between the producer and the processor or, say, an elevator operator is one of sale, title to the products will normally pass to the processor on delivery and it will make no difference whether the products do or do not lose their identity on delivery. If, however, it is not clear whether the contract is one of sale or one

of bailment, the fact that the products lose their identity on delivery, as in the McClean Grain case, is a strong indication that the parties intended the contract to be one of sale and, therefore, that the producer did not retain title to the products.

In the McClean Grain bankruptcy, the Trustee asked the Courts for advice in respect to the ownership of certain grain and soya beans delivered by various farmers prior to bankruptcy and also with respect to certain purchases thereof from McClean Grain by other parties.

This application was adjourned pending the taking of a reference before His Honour Judge McCallum in London, Ontario, as to the ownership and this reference specifically excluded any determination of the validity of the bank's Section 88 security. Title to all but a relatively small amount of the grain and soya beans was found to have passed from the farmers to McClean Grain Ltd. and none was found to have passed in the purchase thereof from McClean Grain Ltd. by other parties. All the parties other than the Trustee in Bankruptcy and the bank appealed Judge McCallum's findings but eventually a settlement agreed to by the creditors was submitted to and approved by the Court providing in effect for a preference among the general creditors to the farmer claimants and also to the certain purchasers of grain previously mentioned.

The bank took no part in the settlement discussions, made no contribution to the settlement, and received nothing from it as loans were repaid from other sources. No part of moneys received by the Trustee on disposition of grain and soya beans immediately after the bankruptcy was in any way received by the bank and, no doubt, a portion of such proceeds was used by the Trustee in Bankruptcy to make the preferential payments agreed upon in the creditor's settlement.

Mechanics' Lien Legislation

The view has been expressed that while the terms of Bill C-5 are of course not completely identical with the provisions of Mechanics' Lien Act legislation in effect in certain provinces, there is an analogy. Based upon that view, the question was asked whether when the Mechanics' Lien Act was introduced in the respective provinces, The Canadian Bankers' Association raised any objections.

Generally speaking, mechanics' lien legislation gives the workman or materialman a lien against land, subject to various stipulations. When the legislation was introduced many years ago banks were not permitted to lend against the security of land and, of course, this is still the case. Therefore, banks were not in the class of lenders affected by such legislation and would have had no cause to object to it. In passing it should be noted that mechanics' lien legislation recognizes and preserves the security of a lender who has a prior mortgage, and such lender, when advancing money under his mortgage, is able to protect his priority against liens.

The question no doubt also relates to the trust provisions of the Mechanics' Lien Acts which are found in the Acts for the Provinces of New Brunswick, Ontario and British Columbia. Similar provisions are found in the Builders' and Workmen's Act of Manitoba. There are no such provisions in the Acts of the other provinces as far as we are aware.

The trust provisions, which have had a serious effect on the banks, were added in more recent years (Manitoba—1932, Ontario—1942 and British Columbia—1948). These provisions did not go unnoticed and, to illustrate, the C.B.A. counsel in 1942 warned the banks of the implications and difficulties that might arise for the banks in financing contractors. While the banks were on the alert because of this warning, in point of practical experience the

situation that was warned against actually did not become a problem until 1955 when there was the adverse decision of the Courts in the Honeywell case which led to a long line of cases in the ensuing years.

As the full impact of adverse Court decisions was felt, the banks began to protest the inequities of these trust provisions:

Ontario

The Board of Trade of Metropolitan Toronto convened a conference in Toronto to consider amendments to the Mechanics' Lien Act of Ontario, with particular emphasis on some revision of the trust provisions of this Act. Leading associations involved in the construction industry were represented as was the C.B.A. After two years of deliberations the report of this conference was submitted to the Attorney-General of Ontario, proposing many changes in this Act, including a 60-day time limitation for claiming under these trust provisions.

British Columbia

In 1961 the C.B.A. filed a Brief with the Select Legislative Committee of British Columbia objecting to the trust provisions in the British Columbia Act.

In June last the British Columbia Federation of Construction Associations filed a Brief with the British Columbia Government along similar lines to that submitted in Ontario. The following is an excerpt from that Brief:

The end result of the above Court decision is that lenders can no longer safely rely for the security of their advances on moneys receivable under construction contracts, and as a result this tends to interfere with the normal extension of credit to this industry and to deny assistance by banks to financing a substantial volume of construction by making money less available and inevitably placing the burden of financing this business on the material supplier and sub-contractors.

We emphasize that the view expressed in the foregoing quotation was put forward not on behalf of the banks but on behalf of an organization of contractors.

Saskatchewan

In 1962 the Saskatchewan Government formed a Royal Commission to enquire into the Mechanics' Lien Act. The C.B.A. submitted a Brief opposing trust provisions. The Honourable H. F. Thomson, Q.C., Commissioner, appointed under the Public Inquiries Act to investigate and inquire into the effect and operation of the Mechanics' Lien Act, Saskatchewan, under conditions then (1962) existing in the Province, and other matters made an extensive examination of other Canadian Statutes and Court cases based upon a consideration of them. His report contains the following paragraph recommending against the adoption of trust provisions in Saskatchewan's Mechanics' Lien Legislation:

I have therefore carefully considered all of the arguments submitted on this question and have come to the conclusion that Saskatchewan would be unwise to adopt trust provisions such as presently exist in New Brunswick, Ontario, Manitoba and British Columbia. I am not convinced that the recommendations of the Joint Conference of the Board of Trade of Metropolitan Toronto would provide an acceptable alternative. If Ontario can find a solution which works it can easily be adopted by amendment to our Saskatchewan Act. In the meantime our Act is working very well. It is really surprising how many of

those who appeared before the Commission thought that it was really better than any of the others. Under the circumstances I recommend that nothing be done at this time about these trust provisions.

Based upon the suggestion of analogy between the provisions of a Mechanics' Lien Act and what is intended to be attained by Bill C-5, we were also asked whether "under the circumstances and in view of the fact that the Mechanics' Lien Act is established and has been accepted for years, the terms of this Bill are inconsistent and unreasonable in view of the general acceptance of the principles of the Mechanics' Lien Act."

So far as the trust provisions of mechanics' lien legislation are concerned, it is pointed out that they have had an unsettling effect on the construction business. Their scope and meaning still have not been finally settled by the courts, even though the Honeywell case was decided as long ago as 1955. There has been judicial comment as to the adverse effect of the trust provisions upon the ability of contractors to finance their operations. It has also been pointed out by the Honourable Mr. Thomson in the course of his report that the trust provisions of mechanics' lien legislation have resulted in a lot of litigation especially in Ontario and British Columbia. Accordingly, we cannot agree with the statement that the legislation has met with general acceptance.

Alternative Proposals

To enlarge upon the suggestions offered in our first presentation for alternatives to the proposals in Bill C-5, if there are processing industries with a record of insolvencies resulting in grievous financial misfortunes for primary producers, the producer organizations might give consideration to establishing standards of financial responsibility for that class of processor which standards would of themselves effectively reduce the credit risk. When under such standards a processor's financial position is not as strong as it is felt it should be, conditions of sale by the producer could call for the providing of an appropriate form of payment insurance or bonding to supplement the processor's own resources.

In principle such measures are now availed of in the construction industry through the use of bonding arrangements; in Ontario, contractors are required to meet prequalification financial requirements when bidding on Government contracts. Another example of establishing financial standards is in the licensing and bonding of livestock commission houses and dealers who operate at stockyards.

Where producers are organized as a group a reserve fund for credit losses built up by levying a small percentage of sales could provide relief when processor failures occur. Associations of producers undoubtedly have officials who are as well qualified by experience and knowledgeability, as their counterparts in other business fields, to have an awareness of credit risks in their dealings with processors. When doubt exists as to financial responsibility, the element of risk must either be accepted, cash demanded upon delivery, or another outlet found for the produce. In making this statement we recognize fully that when only one processor services a local area growing perishable crops, the farmer is in a serious position should the processor collapse financially during the harvest season. As mentioned previously, it should be possible to limit these hazards through the use where desirable of a bonding or insurance arrangement.

Since our last appearance, evidence given at the hearings has emphasized the plight of the farmer who suffers financial loss through the insolvency of a processor of his crops perhaps to the extent of the value of an entire season's harvest. These happenings, while fortunately infrequent in terms

of the overall volume of such business, are certainly matters of real distress and do call for preventative measures. The difficulty is to find remedies that do not carry with them damaging side effects. In this respect, we feel strongly that the intention underlying Bill C-5 should not be accomplished by means entailing a change in the whole concept of Section 88 which the passage of the Bill would bring about. The useful place in Canadian financing held by Section 88 over the years indicates that remedial measures for the problem under consideration should be compatible with the broad general interests of the producer sectors as a whole and should be of a nature that will permit the small processor to continue to obtain the credit he needs while at the same time affording added safeguards for the credit risk to which the farmers are exposed. The banks are convinced from experience that Section 88 as it now stands serves the essential needs of many businesses in circumstances where other financing, if available, would probably be more costly.

Legislation Affecting Banking Generally

Finally, we would like to record our general view that legislation, such as Bill C-5, which would affect established powers and procedures for the carrying on of banking in Canada as laid down in the Bank Act should always be a matter that is acknowledged to fall for consideration within the scope of the decennial revision of that Act. We, of course, recognize that the Standing Committee on Banking and Commerce now considering Bill C-5 is the Committee which will have the responsibility next year of dealing with the revision of the Bank Act. These decennial revisions look into all aspects of banking at the one time and this has the merit of ensuring that proposed changes are examined in the context of the subject as a whole. On occasion Bank Act revisions are preceded by special studies of the nature now being made by the Royal Commission on Banking and Finance which Commission has had presented to it by the public at large a broad range of viewpoints.

Respectfully submitted on behalf of
The Canadian Bankers' Association

H. L. Robson
Secretary.

December 10th, 1963

EXHIBIT

Loans under Section 86 and/or Section 88 of the Bank Act to processors who purchase from primary producers. The figures indicate the Banks' experience during the period 1960/62 inclusive

Classification	Number of Accounts in Classification	High Point of 86 and 88 loans made to borrower in each year—Totals		
		Year 1960 \$'000	Year 1961 \$'000	Year 1962 \$'000
(i) Fruit and Vegetable Packers and Canners	245	40,535	46,291	52,808
(ii) Grain Dealers & Flour & Feed Mills	335	368,224	409,728	301,544
(iii) Meat Packers and Canners	118	16,168	23,080	24,156
(iv) All Dairy Products	242	13,471	15,753	16,947
(v) Sea Product Processors	198	36,909	42,083	49,787
(vi) Lumbering	1,335	147,149	150,869	180,990
(vii) Fur Dealers	56	3,638	3,783	3,928
(viii) Smelters or Other Processors of Minerals	196	25,787	35,222	43,870
(ix) Others (mainly includes manufacturers and wholesalers)	897	99,204	122,385	139,355
Total	3,622	751,085	849,194	813,385

Total of Section 86 and Section 88 loans to this group of borrowers at December 31, 1962 \$617,915,000

Banks' experience during the three-year period 1960-1962 in taking recourse of recovery provided for under Section 86 or 88 security in the account of a processor who made purchases from a primary producer

Number of Accounts 110

Amount of loans when
difficulties encountered \$8,554,929

APPENDIX "B"

MEMORANDUM ON THE CONSTITUTIONAL
VALIDITY AND OTHER ASPECTS OF BILL C-5

1. CONSTITUTIONAL VALIDITY

It is alleged, albeit not strenuously, that Bill C-5 is an invasion of the provincial power to legislate on "Property and Civil Rights in the Province".

As pointed out by the Judicial Committee of the Privy Council in *Cushing vs. Dupuy*, (1880) 5 Appeal Cases 409 at page 415:

"It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying the ordinary rights of property, and other civil rights, nor without providing some mode of special procedure for the vesting, realization and distribution of the estate, and the settlement of the liabilities of the insolvent."

Judicial
comment.

Bill C-5 utilizes a mode of special procedure that already has been twice approved of and used by Parliament. Section 52 of the *Bankruptcy Act* rewrites the law of contract in order to legally protect an author's equitable but not legal rights in a manuscript in the hands of a bankrupt publisher. Section 89 of the *Bank Act* gives a bank a first and preferential lien and claim on a loan under section 88: but section 88(5) provides that, if the debtor goes bankrupt, then the debtor's employees get a priority ahead of the bank's preferential lien to the extent of three months' wages. The method used in Bill C-5 and the *Bank Act's* section 88(5) are identical in principle. The debtor-creditor rights *inter partes* are defeasible in part upon a condition subsequent—the bankruptcy of the debtor.

Parlia-
mentary
precedent.

Bankruptcy
Act, s. 52.

Bank Act
ss. 88 & 89.

2. LEGAL PRACTICALITY

It is alleged that the Courts would be totally unfamiliar in dealing with those parts of the assets affected that are perishable, uncanned, etc. The Courts are not unused to this problem. The Ontario Supreme Court has a Rule similar to that of the Supreme Courts of other provinces:

"The Court may, at any time, order the sale, in such manner and on such terms as may seem just, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once."

Ontario
Supreme
Court Rule
of Procedure
No. 370.

Parliament itself has delegated similar powers in the *Fisheries Act*, 1960-61, c. 23, s. 10 to Department of Fisheries employees; and in the *Customs Act*, 1952 R.S., c.58 s. 157, to Port Collectors.

Parliamen-
tary
Precedents.

It is also alleged that Bill C-5 is legally too wide in including the producers of forest, quarry and mine, seas, lakes and rivers products as well as those of agriculture inasmuch as representatives of these other producers have not been represented at the committee hearings. These are the classes included in section 88 of the *Bank Act*; it would appear discriminatory for Bill C-5 to exclude any of them. None of these non-agricultural primary producers—with the possible exception of the B.C. fishermen, who are not likely to be affected, have strong organizations.

Inclusion
of all
primary
producers.

3. FINANCIAL PRACTICALITY

It is suggested that the effect of Bill C-5 would be to tighten credit facilities available to processors and so affect adversely the

Tight
money.

primary producers and the community. No disinterested expert opinion was produced to so testify: nor to discredit the specific testimony of the witnesses who supported the Bill that, on the balance of public convenience and inconvenience, the present state of the law produces a greater adverse effect on the individual and on the community.

Credit investigation of processors by producers.

It was suggested that the primary producers should set up their own investigation service. The publication of credit investigation results, unless carefully controlled and restricted, can give rise to civil litigation damaging to the publisher. The wide publication that the primary producers would have to give to such information negates the idea of such a practice; in this regard, the producers are in a different position entirely from the banks and processors. Furthermore, some primary producers—under provincial laws—have no option as to whom they can sell. It was also suggested that the provinces might conduct such investigations and advise the primary producers of the credit ratings of the processors. This would be a reprehensible practice on the part of any government and it is unlikely any provincial government would accede to such an invasion of the private citizen's right to privacy.

4. ALTERNATIVES SUGGESTED

Provincial action. Ultra vires.

It was suggested that provincial legislation would be preferable.

1) The answer is that provincial legislation to cover this particular grievance, in the manner that Bill C-5 does, would probably be *ultra vires* of a province as infringing the federal government's jurisdiction over "Bankruptcy and Insolvency."

Impracticability.

2) Such legislation, if constitutionally possible, would have to be approved and adopted by 10 provincial legislatures and the federal government for the Territories. Efforts to obtain such unanimity on other subjects by the Committee on Uniformity of Legislation have, at best, taken years—and, at worst, have not been successful.

Private arrangement between producers and processors.

It was further suggested that a private arrangement between processors and primary producers might be negotiated to remedy the grievance.

The only remedy equal to the coverage given by Bill C-5 would be for the processors, by insurance or otherwise, to cover possible losses by primary producers. No commitment by the processors has been made to any degree in that direction. And, in any event, if put into effect it could be revoked at the will of the processors. Bill C-5, when enacted, can only be repealed by Parliament. And, when other creditors have their rights on a bankruptcy protected by the provisions of the *Bankruptcy Act*, there is no reason why the primary producers should be dependent upon a private agreement outside the protection of the *Bankruptcy Act*.

The primary producer is presently a banker—without security—for the processor: at the same time he provides the security for the banker's loan to the processor. The effect of Bill C-5 is to give the primary producer the security of his own product on a bankruptcy without undue diminution of the bank's security or of the rights of other creditors.

Respectfully submitted by
Eugene Whelan on behalf of the
Primary Producers of Canada.

(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964

STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE

(*Chairman:* LARRY PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

(TUESDAY, JULY 7, 1964)

Respecting

Bill S-34, An Act to incorporate Nova Scotia Savings & Loan Company

WITNESSES:

(Hector McInnes, Q.C., Parliamentary Agent; R. Guy, General Manager,
Nova Scotia Savings and Loan Company; K. R. MacGregor, Superin-
tendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Larry Pennell, Esq.
Vice-Chairman: R. Gendron, Esq.
and Messrs.

Addison	Douglas	Monteith
Aiken	Frenette	More
Armstrong	Flemming	Moreau
Asselin	(Victoria-	Morison
(Notre-Dame-de-	Carleton)	Nowlan
Grâce)	Gelber	Nugent
Basford	Grafftey	Otto
Bell	Gray	Pascoe
Berger	Grégoire	Ryan
Blouin	Guay	Rynard
Cameron	Hales	Scott
(High Park)	Jewett (Miss)	Tardif
Cameron	Kindt	Thomas
(Nanaimo-Cowichan-	Klein	Vincent
The Islands)	Lloyd	Wahn
Caouette	Macaluso	Whelan
Casselman (Mrs.)	Mackasey	Woolliams—50.
Côté	McCutcheon	
(Chicoutimi)	McLean (Charlotte)	

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

TUESDAY, March 24, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-9, An Act respecting Scottish Canadian Assurance Corporation.

Bill S-8, An Act respecting The General Accident Assurance Company of Canada.

FRIDAY, April 14, 1964.

Resolved,—That the following Members do compose the Standing Committee on Banking and Commerce:

Messrs.

Addison,	Flemming (<i>Victoria-</i>	McLean (<i>Charlotte</i>),
Aiken,	<i>Carleton</i>),	Monteith,
Armstrong,	Gelber,	More (<i>Regina City</i>),
Asselin (<i>Notre-Dame-</i>	Gendron,	Moreau,
<i>de Grâce</i>),	Grafftey,	Morison,
Bell,	Grégoire,	Olsen,
Cameron (<i>High Park</i>),	Habel,	Otto,
Cameron (<i>Nanaimo-</i>	Hahn,	Pascoe,
<i>Cowichan-The Islands</i>),	Hales,	Ryan,
Caouette,	Jewett (<i>Miss</i>),	Rynard,
Casselman (<i>Mrs.</i>),	Kelly,	Scott,
Chaplin,	Kindt,	Tardif,
Chrétien,	Klein,	Thomas,
Côté (<i>Chicoutimi</i>),	Leblanc,	Vincent,
Crossman,	Lloyd,	Wahn,
Crouse,	Mackasey,	Whelan,
Danforth,	Matte,	Woolliams—50.
Douglas,	McCutcheon,	

(Quorum 15)

Ordered,—That the said Committee be empowered to examine and inquire into all such matters and things as may be referred to it by the House; and to report from time to time its observations and opinions thereon, with power to send for persons, papers and records.

WEDNESDAY, April 22, 1964.

Ordered,—That the names of Messrs. Pennell, Basford, and Gray be substituted for those of Messrs. Kelly, Crossman, and Habel respectively on the Standing Committee on Banking and Commerce.

TUESDAY, April 28, 1964.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto; and that the quorum of the said Committee be reduced from 15 to 10 Members, and that Standing Order 65(1)(d) be suspended in relation thereto.

Ordered,—That the name of Mr. Nugent be substituted for that of Mr. Crouse on the Standing Committee on Banking and Commerce.

THURSDAY, May 7, 1964.

Ordered,—That Bill S-14, An Act respecting The Dominion Life Assurance Company, be referred to the Standing Committee on Banking and Commerce.

TUESDAY, May 12, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-12, An Act respecting Allstate Insurance Company of Canada.

Bill S-15, An Act to incorporate Evangeline Savings and Mortgage Company.

TUESDAY, June 2, 1964.

Ordered,—That Bill S-18, An Act respecting The Montreal Board of Trade, be referred to the Standing Committee on Banking and Commerce.

TUESDAY, June 16, 1964.

Ordered,—That the name of Mr. Macaluso be substituted for that of Mr. Hahn on the Standing Committee on Banking and Commerce.

TUESDAY, June 16, 1964.

Ordered,—That the following Bills be referred to the Standing Committee on Banking and Commerce:

Bill S-30, An Act respecting The Dominion of Canada General Insurance Company.

Bill S-31, An Act respecting The Casualty Company of Canada.

THURSDAY, June 18, 1964.

Ordered,—That Bill S-28, An Act respecting the Quebec Board of Trade, be referred to the Standing Committee on Banking and Commerce.

THURSDAY, June 18, 1964.

Ordered,—That the name of Mr. Marcoux be substituted for that of Mr. Olson on the Standing Committee on Banking and Commerce.

FRIDAY, June 19, 1964.

Ordered,—That the name of Mr. Nowlan be substituted for that of Mr. Danforth on the Standing Committee on Banking and Commerce.

THURSDAY, June 25, 1964.

Ordered,—That Bill S-34, An Act to incorporate Nova Scotia Savings & Loan Company, be referred to the Standing Committee on Banking and Commerce.

FRIDAY, June 26, 1964.

Ordered,—That the Standing Committee on Banking and Commerce be authorized to sit while the House is sitting.

THURSDAY, July 2, 1964.

Ordered,—That the name of Mr. Guay be substituted for that of Mr. Leblanc on the Standing Committee on Banking and Commerce.

MONDAY, July 6, 1964.

Ordered,—That the names of Messrs. Berger, Frenette, and Blouin be substituted for those of Messrs. Matte, Marcoux, and Chrétien respectively on the Standing Committee on Banking and Commerce.

Attest

LÉON-J. RAYMOND,
The Clerk of the House.

REPORTS TO THE HOUSE

APRIL 28, 1964.

The Standing Committee on Banking and Commerce has the honour to present the following as its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;

2. That its quorum be reduced from 15 to 10 members and that Standing Order 65(1)(d) be suspended in relation thereto.

Respectfully submitted,

LARRY PENNELL,
Chairman.

Concurred in this day.

JUNE 16, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

THIRD REPORT

Your Committee recommends that it be authorized to sit while the House is sitting.

Respectfully submitted,

LARRY PENNELL,
Chairman.

Concurred in June 26, 1964.

JULY 9, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

FIFTH REPORT

Your Committee has considered Bill S-34, An Act to incorporate Nova Scotia Savings and Loan Company, and has agreed to report it without amendment.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 1) is appended.

Respectfully submitted,

LARRY PENNELL,
Chairman.

NOTE: The Second and Fourth Reports deal with Private Bills, Proceedings of which were not published.

MINUTES OF PROCEEDINGS

THURSDAY, April 23, 1964.

(1)*

The Standing Committee on Banking and Commerce met this day at 10.10 o'clock a.m. for organization purposes.

Members present: Messrs. Addison, Aiken, Basford, Crouse, Flemming (Victoria-Carleton), Gelber, Gendron, Gray, Hahn, Mackasey, Matte, McCutcheon, McLean (Charlotte), Moreau, Olson, Pennell, Ryan, Rynard, Thomas, Whelan (20).

The Clerk attending, and having called for nominations, Mr. Hahn moved, seconded by Mr. McLean (Charlotte), that Mr. Pennell be elected Chairman of the Committee.

There being no further nominations, Mr. Pennell was declared elected as Chairman.

Mr. Pennell thanked the Committee for the honour conferred on him.

On motion of Mr. Moreau, seconded by Mr. Matte, Mr. Gendron was elected Vice-Chairman.

On motion of Mr. Basford, seconded by Mr. Rynard,

Resolved,—That a Sub-Committee on Agenda and Procedure, comprising the Chairman and six members to be designated by him, be appointed.

On motion of Mr. Moreau, seconded by Mr. Crouse,

Resolved,—That permission be sought from the House to print such papers and evidence as may be ordered by the Committee.

On motion of Mr. Gelber, seconded by Mr. Thomas,

Resolved,—That the Committee recommend to the House that its quorum be reduced from 15 to 10 members.

At 10.20 o'clock a.m., the Committee adjourned to the call of the Chair.

M. Slack,
Clerk of the Committee.

TUESDAY, July 7, 1964.

(4)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Basford, Cameron (High Park), Frenette, Gendron, Gelber, Gray, Grégoire, Guay, Klein, Lloyd, Moreau, Morison, Otto, Pennell, Ryan, Thomas, Vincent (18).

In attendance: Gerald Regan, M.P., Sponsor of Bill S-34; Hector McInnes, Q.C., Parliamentary Agent; R. Guy, General Manager, Nova Scotia Savings and Loan Company; Mr. K. R. MacGregor, Superintendent of Insurance.

On motion of Mr. Berger, seconded by Mr. Grégoire,

* The 2nd and 3rd meetings deal with Private Bills, for which Proceedings were not published.

Resolved: That the Committee cause to be printed 750 copies in English and 300 in French of the Minutes of Proceedings and Evidence relating to Bills S-28 and S-34.

The committee first considered Bill S-28, the proceedings of which are recorded separately.

The committee then proceeded to consideration of Bill S-34, An Act to incorporate Nova Scotia Savings and Loan Company.

On the Preamble:

Mr. Regan, Sponsor of the Bill, introduced the Parliamentary Agent, Mr. McInnes, and the witness, Mr. Guy.

Mr. MacGregor was called, made a statement and was questioned.

The Preamble, Clauses 1 to 14 inclusive, and the Title were severally carried.

The Bill was carried without amendment.

Ordered: That Bill S-34 be reported without amendment.

At 12.20 p.m., on motion of Mr. Grégoire, the Committee adjourned until 3.00 p.m. to resume consideration of Bill S-28.

DOROTHY F. BALLANTINE,
Clerk of the Committee.

EVIDENCE

TUESDAY, July 7, 1964.

The CHAIRMAN: I will call the Preamble of Bill No. S-34, An Act to incorporate Nova Scotia Savings and Loan Company, and would invite the sponsor, Mr. Regan, to introduce the parliamentary agent and any witnesses he may wish to call.

Mr. REGAN: Thank you, Mr. Chairman and members of the committee.

This is an act to incorporate the Nova Scotia Savings and Loan Company. To explain the purpose of this legislation we have Mr. MacGregor, director of insurance, and Mr. Hector McInnes, solicitor and Parliamentary Agent. We also have with us Mr. Ross Guy, general manager of the company.

I propose, if it is agreeable to the committee, to have Mr. MacGregor first give an explanation of the purpose of this proposed legislation.

The CHAIRMAN: Thank you, Mr. MacGregor, would you kindly come forward please? All members of the committee I am sure are aware that Mr. MacGregor is the superintendent of insurance.

Mr. K. R. MACGREGOR (*Superintendent of Insurance*): Mr. Chairman and honourable members, I feel that in view of the discussion and the hour I should endeavour to be as brief as possible.

Although the form of this bill S-14 to incorporate Nova Scotia Savings and Loan Company may appear to be rather unusual and perhaps a bit complicated, actually its purpose is quite simple. Stated briefly, this bill would transform a very old Nova Scotia building society called the Nova Scotia Saving, Loan and Building Society, having a very peculiar form of capital, into a federal joint stock loan company of the usual kind.

Looking at the bill, this purpose would be accomplished by first incorporating a new federal loan company called the Nova Scotia Savings and Loan Company, and this part of the purpose is dealt with by clauses 1 to 7, inclusive.

Secondly, the new federal loan company would be given the power to amalgamate with the existing provincial society, and that part of the purpose is covered by clauses 8 to 13 inclusive.

Clause 14 at the end of the bill is included for technical reasons relating to income tax.

May I simply say that the existing society was incorporated by the province of Nova Scotia away back in 1849 and began business in 1850. It has operated successfully for 114 years and during the last 40 years or more under the supervision of our department, even though it is a provincial organization.

The purpose of the existing society has been to accept money from the public in the form of deposits or debentures, or as capital—and I should like to say a few words later about the peculiar nature of its capital—and with these funds to lend them out mainly on real estate mortgages. The society is in quite a sound financial position.

At the end of 1963, the liability side of its balance sheet showed debentures amounting to, and I will give round figures, \$18,419,000. It had accepted deposits amounting to \$3,050,000 and had other miscellaneous liabilities amounting to \$327,000, making total liabilities of \$21,796,000.

Still on the liability side of the balance sheet, it had capital in the amount of \$1,716,000, a general reserve of \$1,200,000, special reserves of \$383,000, and

a surplus or a balance in its profit and loss account of \$117,000. When you add the capital and these reserves to the total liabilities you get the society's total assets, namely, \$25,212,000.

The question may be asked, what is the peculiar kind of capital of this society? First of all these old building societies, although quite common in England, have been quite uncommon in Canada and this to my knowledge is the only one left of its kind here.

Mr. GELBER: Could you give me the capital reserve figures again?

Mr. MACGREGOR: The capital and reserves added together amount to \$3,416,000.

Mr. GELBER: What is the special reserve fund?

Mr. MACGREGOR: The special reserve is \$383,000, really against their mortgages, but the general reserve is \$1,200,000.

Mr. GELBER: Does that come out of earnings or is that paid in reserves?

Mr. MACGREGOR: It came out of earnings over the years.

Mr. GELBER: How old is the society?

Mr. MACGREGOR: 114 years.

Mr. GELBER: I see.

Mr. RYAN: You say the net worth now is \$25 million?

Mr. MACGREGOR: That is the total amount of assets, Mr. Ryan. The total is \$25,212,000.

Unlike an ordinary joint stock company, however, with permanent capital, the capital of this society is of a temporary nature. Over the years in accordance with its governing constitution and rules, it has sold shares to the public either on a fully paid basis or on an instalment basis. The fully paid shares have been sold for \$240 and carry interest or a dividend of five per cent, which is not paid out in cash but which accumulates, with the result that at the end of 14 years the \$240 share matures at double the amount, namely \$480. At that time the shareholder does not have the full say whether he may leave his money with the company or not. It is up to the management of the company at that time to decide whether they want to keep the money in whole or in part.

The instalment shares were sold on the basis of \$2 per month payable for 101 months and they carry interest or a dividend of four per cent which also accumulates, with the result that at the end of 101 months the instalment share matures for \$240. Sometimes in the past the \$240 has been taken to purchase a fully paid share.

However, members of the committee I am sure will readily see that capital of this kind might be quite unstable, and it is conceivable, although it has never happened to my knowledge, that the management might require upon maturity that a lot of this capital be repaid, and the society might be left in the hands of a relatively small group of management. That is one disadvantage of the present situation; the instability that capital of this kind carries with it.

Secondly, of course, shares of this kind cannot be traded or listed on an exchange.

Thirdly, the peculiar nature of this capital has given rise to very considerable uncertainty for income tax purposes. Over the years the income tax department has seemingly had very considerable difficulty in making up its mind whether the accumulating interest or dividends in respect of these shares should be treated like bond interest and, therefore, allowed as a deduction from taxable income of the society or whether it should be treated like dividends paid out of earnings.

Back in 1938 an arrangement was made or an agreement was reached with the income tax department, on an arbitrary basis whereby 60 per cent of these

accumulations credited each year would be treated virtually as bond interest and allowed as a deduction in respect of the taxable income of the society. The other 40 per cent would not be so treated. In 1957 the tax department changed its mind again and said from that date on all of these accretions would be treated the same as dividends and would be paid out of earnings. Consequently since 1957 the society has not been able to deduct any of these credits to its shares as an expense for income tax purposes.

For all of these reasons the society for quite some time has been contemplating a transformation or change of its status so that it would be a joint stock loan company of the usual kind. That is the whole purpose of this bill along with the purpose, as I mentioned earlier, of changing from provincial to federal status.

The ordinary and direct way to accomplish a transformation of a provincial company to a federal company, and I am speaking more particularly of the insurance field with which I am most familiar, would be to incorporate a new federal company with power to take over by agreement the assets and liabilities of the provincial company. However, this procedure gives rise to very substantial income tax under the Income Tax Act on the undistributed income of the provincial company upon the winding up and disappearance of that company.

That problem was recognized a good many years ago in the insurance field because there were many provincial insurance companies coming to parliament from time to time seeking federal status. So a special provision was put in the Income Tax Act—section 82 subsection (15)—making it clear that there would be no income tax incurred in an insurance case where no money would be paid out to shareholders and it is simply a transformation from provincial to federal status. However, that subsection does not apply to a loan company. This is the first case in which we have had a provincial loan company seeking to become a federal loan company. The only way in which that can be done under the existing Income Tax Act without incurring a prohibitive tax is through the amalgamation route utilizing section 85I of the Income Tax Act. This whole procedure has been referred to the income tax department. As a result, the society, the law clerk and parliamentary counsel of the Senate, and I think all concerned, have a copy of a letter from the income tax department stating that the procedure adopted in this bill carries their approval and they have no objection to it.

I might say a word about one feature of the first seven clauses which, as I mentioned, are really designed to incorporate the new federal loan company.

Hon. members will notice that the capital mentioned in clause 5 as required to be subscribed and paid before the new company may commence business is extremely small, being only \$12,500, but in that connection I would draw the attention of the committee to subclause (2) of clause 5 at the top of page 2 which makes it clear that prior to amalgamation the new company shall not carry on any business except such as is necessary to consummate the amalgamation. All that is necessary is to create the new federal loan company as a vehicle to amalgamate with the existing provincial society. The existing provincial society has a great deal of capital; it is in a good financial position. The reason for the \$12,500 which appears in clause 5 is simply to accord with the minimum requirements of the Loan Companies Act under which this company will operate.

A loan company must have a minimum of five directors, and the minimum share qualification for a director is \$2,500. That is where the \$12,500 comes from.

I think it may be unnecessary to go through clauses 8 to 13 in detail, all of which relate to the proposed amalgamation of the new federal loan company with the existing provincial society. Clauses 8 to 13 may appear a little complicated, but may I say that they follow very closely the amalgamation provisions in the Loan Companies Act which apply generally to all federal loan companies. The reason it is necessary to make special provision in this bill for this case is that the amalgamation provisions in the Loan Companies Act apply only to the amalgamation of two federal loan companies; they do not apply to the amalgamation of a federal loan company with a provincial company or society.

Members may ask if there is any precedent for this kind of amalgamation procedure. In answer I may say that there is. In 1961 a federal trust company, the Canada Permanent Trust Company, desired to amalgamate with an existing provincial trust company, namely the Toronto General Trusts Corporation. A special act of parliament was passed in 1961, being chapter 77 of the statutes of that year.

I might say for the information of the committee that clauses 8 to 13 in the present bill follow almost verbatim the corresponding sections of the special act that was passed in 1961 amalgamating a federal trust company with a provincial trust company.

Clause 14, being the final clause of the bill, is included for technical income tax purposes, as I mentioned. I do not feel it is my responsibility to justify or explain in detail an income tax clause; I would prefer to leave that to the society itself or to the tax department. However, I have already stated that the tax department has gone over the whole procedure and has approved it. Clause 14 is not there to enable the existing society to avoid tax; it is there for clarification and to remove any possible doubt there might be of a technical nature that this procedure is appropriate under section 85I of the Income Tax Act. As an example, the first thing clause 14 states is that the amalgamation hereinbefore referred to shall be deemed to be an amalgamation within the provisions of section 85I.

Mr. LLOYD: Mr. MacGregor, you have said that there was a letter from the income tax department. Did that letter refer to this section of the act or the wording of this act? Did the income tax department indicate that this particular provision in the act was not objected to by them? I ask this because I think that the answer may shorten the proceedings.

Mr. MACGREGOR: I will read, Mr. Lloyd, from a letter from the income tax department addressed to Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate, Ottawa:

Dear Sir: Re Nova Scotia Savings & Loan Company.

This will acknowledge receipt of your letter of May 12 regarding the above mentioned company. As requested we have examined clause 14 and advise that this department has no objection to the inclusion of this clause in the bill.

Mr. LLOYD: I submit, Mr. Chairman, that with such a document before us that section would be covered.

Mr. MACGREGOR: I would say that the tax situation of this particular society is not unknown to the income tax department; it has been the subject of discussion for at least 30 odd years, to my knowledge, and as far as I can see it has been discussed back almost to the beginning of the Income Tax Act.

Mr. LLOYD: Before we continue, may I say that I am satisfied with the general explanation that Mr. MacGregor has given for our information. There are one or two pertinent questions with respect to the actions of the company

in fully advising its shareholders what it is doing and what steps they have complied with to ensure that the interests of shareholders have been fully taken care of.

The CHAIRMAN: Are you directing these questions to Mr. MacGregor or to Mr. McInnes?

Mr. LLOYD: These questions would be directed to Mr. McInnes.

Mr. MACGREGOR: May I make one observation first? This bill, of course, would become an act of parliament, and I am sure there may be questions in the minds of the members with regard to the powers of the existing provincial society to amalgamate and follow this procedure. I may say in this connection that a special act of the Nova Scotia legislature was passed at the last session to permit this and to provide for it precisely. That act is referred to at the top of page 4, lines 2, 3 and 4. It is an act respecting the Nova Scotia Savings Loan and Building Society, chapter 109 of the statutes of Nova Scotia, 1964.

Mr. RYAN: Has your department presently licensed the existing provincial company in any way?

Mr. MACGREGOR: We do not license Nova Scotia loan and trust companies. However, back in the early twenties an agreement was made between the government of Nova Scotia and in fact the government of New Brunswick too, and later Manitoba, and the federal government, whereby our department would inspect provincial loan and trust companies and virtually act in the same capacity as their legislation requires some provincial official to act. Briefly, we get annual statements from all loan and trust companies in Nova Scotia, New Brunswick and Manitoba. We examine these companies annually at the head office, but they are not licensed by us as federal companies are licensed.

Mr. RYAN: Does this company carry on business outside the province of Nova Scotia?

Mr. MACGREGOR: It operates mainly in the Halifax-Dartmouth area but also in southern New Brunswick.

Mr. RYAN: Is it strictly for income tax purposes that a federal act is being sought here?

Mr. MACGREGOR: No. I think it is for competitive and prestige reasons that it desires federal status. One of its biggest competitors is the Eastern Canada Savings and Loan Company, which is a federal company.

Mr. RYAN: Under this proposed plan of amalgamation will the provincial charter presently existing ultimately disappear or will there be a continuation of both charters?

Mr. MACGREGOR: The provincial society and the new federal company will merge and amalgamate as provided for under this bill so as to become one corporate entity, and the two separate partners will disappear.

Mr. LLOYD: You said, Mr. MacGregor, that the provincial government passed an act. I presume we would assume that when that act was passed all considerations with respect to shareholders were fully examined by that legislative authority?

Mr. MACGREGOR: I believe so, and I am satisfied that is so because a proposed change in structure and status of this kind has been under consideration in the society not just for a year but, to my knowledge, for at least six or seven years.

The CHAIRMAN: Could Mr. McInnes come forward as we will start going through the bill?

On the preamble.

Shall the preamble carry?

Preamble agreed to.

Causes 1 to 7, inclusive, agreed to.

On clause 8—*Amalgamation*.

Mr. GELBER: I have a question on clause 8, Mr. Chairman. I presume that all contracts undertaken by the previous company are enforceable by the successor company?

Mr. MACGREGOR: Most certainly.

The CHAIRMAN: Shall clause 8 carry?

Clause agreed to.

Clauses 9 to 14 inclusive, agreed to.

On the title.

Shall the title carry?

Title agreed to.

Shall I report the bill without amendment?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: The meeting is adjourned.

EX-11
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(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

CANADA.

BANKING AND COMMERCE

(Chairman: LARRY PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

(TUESDAY, JULY 7, 1964)

Respecting

Bill S-28, An Act respecting the Quebec Board of Trade.

WITNESSES:

(Mr. Renault St-Laurent, Counsel, and Mr. Roger Vezina, General Manager, Quebec Board of Trade; Mr. Adrien Begin, Chairman, Levis Chamber of Commerce.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Larry Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison	Douglas	Monteith
Aiken	Frenette	More
Armstrong	Flemming	Moreau
Asselin	(Victoria-	Morison
(Notre-Dame-de-	Carleton)	Nowlan
Grâce)	Gelber	Nugent
Basford	Grafftey	Otto
Bell	Gray	Pascoe
Berger	Grégoire	Ryan
Blouin	Guay	Rynard
Cameron	Hales	Scott
(High Park)	Jewett (Miss)	Tardif
Cameron	Kindt	Thomas
(Nanaimo-Cowichan-	Klein	Vincent
The Islands)	Lloyd	Wahn
Caouette	Macaluso	Whelan
Casselmann (Mrs.)	Mackasey	Woolliams—50.
Côté	McCutcheon	
(Chicoutimi)	McLean (Charlotte)	

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

REPORT TO THE HOUSE

July 9, 1964

The Standing Committee on Banking and Commerce has the honour to present its

SIXTH REPORT

Your Committee has considered Bill S-28, An Act respecting The Quebec Board of Trade, and has agreed to report it with the following amendments:

Clause 1

Amend sub-clause (1) to read:

"The name of the Corporation, in English, is hereby changed to Board of Trade of *the District of Quebec*, and, in French, to *Chambre de Commerce du District de Quebec*."

Clause 3

In line 4, delete the words "metropolitan area" and substitute therefor the word "district".

In paragraph (c), line 16, delete the words "metropolitan area" and substitute therefor the word "district".

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 2) is appended.

Respectfully submitted,

LARRY PENNELL,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, July 7, 1964

(4)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Basford, Cameron (*High Park*), Gelber, Frenette, Gendron, Gray, Grégoire, Guay, Klein, Lloyd, Moreau, Morison, Otto, Pennell, Ryan, Thomas, Vincent (18).

In attendance: Mr. J.-C. Cantin, M.P., Sponsor of Bill S-28; Mr. Renault St. Laurent, Counsel, Quebec Board of Trade; Mr. Roger Vezina, General Manager, Quebec Board of Trade. *Appearing in opposition:* A. Begin, Chairman, Levis Chamber of Commerce; R. Gauthier, Chairman, Lauzon Chamber of Commerce; M. Moffat, Secretary, Charlesbourg Chamber of Commerce; F. Boilard, Chairman, Beauport Chamber of Commerce.

Also present: Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.

The Chairman presented the First Report of the Subcommittee on Agenda and Procedure, which is as follows:

The following have been appointed to act, with the Chairman, on the Sub-Committee on Agenda and Procedure: Messrs. Bell, Côté (*Chicoutimi*), Grégoire, Gendron, Nowlan and Scott.

Your Sub-Committee met on June 24, 1964, to consider the Notice of Motion then standing in the Chairman's name on the House Order Paper for approval of the Committee's Third Report, requesting power to sit while the House is sitting.

Your Sub-Committee agreed to the Chairman's suggestion that he move the motion with the rider that the Committee will not sit while the House is sitting unless there has first been agreement by the Sub-Committee.

On motion of Mr. Berger, seconded by Mr. Grégoire,

Resolved: That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bills S-28 and S-34.

The Committee then proceeded to consideration of Bill S-28, An Act respecting the Quebec Board of Trade.

The Chairman explained that no French shorthand reporter was available for this meeting and the members agreed to accept the English interpretation of proceedings in French as part of the official record. (*Note: It was later found that, because of technical difficulties, it was impossible to transcribe all of the morning proceedings and this portion of the evidence is therefore incomplete.*)

On the Preamble

Mr. Cantin, M.P., the Sponsor of the Bill, introduced the Promoters, Mr. St. Laurent and Mr. Vezina.

Mr. St. Laurent was called and made a statement.

Mr. Guay introduced the witnesses appearing in opposition to the Bill, and Mr. Begin stated the reasons for opposition.

Mr. St. Laurent and Mr. Vezina were questioned.

The Chairman interrupted the questioning to point out that witnesses appearing in connection with another Bill were waiting and suggested that the Committee should defer further consideration of Bill S-28 until S-34 had been heard.

On motion of Mr. Basford, seconded by Mr. Gelber,

Resolved: That the Committee continue with consideration of Bill S-28 until 11.50 a.m., at which time the Committee will proceed to consideration of Bill S-34.

And the questioning continuing, at 11.50 a.m. the Committee proceeded to consideration of Bill S-34, the proceedings of which are recorded separately in Proceedings No. 1.

The witnesses and Dr. Ollivier withdrew.

At 12.20 p.m., on motion of Mr. Grégoire, the Committee adjourned until 3.00 p.m. this day.

AFTERNOON SITTING

(5)

The Committee reconvened at 3.30 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Berger, Cameron (*High Park*), Gelber, Grégoire, Guay, Klein, Lloyd, McCutcheon, Moreau, Morison, Pascoe, Pennell (12).

In attendance: The same as at the morning sitting.

The Committee resumed consideration of Bill S-28.

The Chairman said he understood that during the lunch adjournment the promoters and opponents of the Bill had arrived at a solution satisfactory to both parties.

Mr. St. Laurent was called and explained that the promoters were willing to accept amendments to the Bill which would delete references to "Metropolitan Quebec" and replace it by the phrase "District of Quebec".

The Preamble was carried.

On Clause 1

Mr. Lloyd moved, seconded by Mr. Berger, that sub-clause (1) be amended to read:

"The name of the Corporation, in English, is hereby changed to Board of Trade of the District of Quebec, and, in French, to *Chambre de Commerce du District de Quebec*."

Sub-clauses 2 and 3 were carried.

Clause 1 was carried, as amended.

Clause 2 was carried.

On Clause 3

Mr. Grégoire, seconded by Mr. Guay, moved that Clause 3 be amended by deleting the words "metropolitan area" in line 4 and substituting therefor the word "district".

Paragraphs (a) and (b) were carried.

Mr. Berger, seconded by Mr. Guay, moved that paragraph (c) of Clause 3 be amended by deleting the words "metropolitan area" in line 16, and substituting therefor the word "district". Carried unanimously.

Paragraphs (d) to (g) inclusive were carried.

Clause 3 was adopted, as amended.

Clauses 4 to 15 inclusive and the Title were severally carried.

The Bill was carried, as amended.

Ordered: That Bill S-28 be reported, as amended.

Mr. St. Laurent thanked the Committee for their courteous hearing.

At 4.00 p.m. the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

NOTE: The Evidence which follows is incomplete.

EVIDENCE

TUESDAY, July 7, 1964.

The CHAIRMAN: Perhaps I could say one word at this stage. So there is no misunderstanding the committee members agree and the people appearing are agreed that we carry on under the present arrangement. I understand also that the other parties who are opposing the bill are agreed to this arrangement. Does the committee agree to that?

Mr. LLOYD: There is one good thing about this arrangement, Mr. Chairman. Those of us who are attempting to learn French will have the opportunity, if these gentlemen speak a little more slowly, of following the discussion.

The CHAIRMAN: Mr. St. Laurent would you kindly come forward please?

You have heard the discussion, and I would also appeal to you to be kind enough to slow down from your usual speed of conversation. I will now give you the floor in order that you may proceed to outline the purpose of the bill before we start dealing with it in detail.

Mr. Renault St. LAURENT (*Counsel, Quebec Board of Trade*): Mr. Chairman, with the 25 per cent Irish blood I have in my veins, if I may be permitted, I will carry on in the language or tongue of my father's mother.

Mr. Chairman, I have the honour to represent the board of trade of Quebec which is the second oldest board of trade or chamber of commerce in Canada, having been organized in 1809 not as a corporation but under the name of the Quebec Committee of Trade. The purpose of that organization was to make sure that there was solidarity of Quebec merchants who had to face the United States competition in the West Indies market and the northern Europe competition in the English market.

At the time of its incorporation in 1842 it was incorporated under statute which was passed during the period of the union of governments under the name of Quebec Board of Trade. The name given to it in French then was Le Bureau de Commerce de Québec.

I should like to point out here that the oldest board of trade or chamber of commerce in Canada is the Halifax board of trade. I understand that one of my confreres from Halifax is here this morning and I am pleased to mention that fact in his presence.

The purpose of our bill, Mr. Chairman, is to modernize and consolidate the corporate structure of the Quebec chamber of commerce, or board of trade, and to change its name in English and French. This does not involve a complete change of name. We wish to add to the name the word "metropolitan" in English and "métropolitain" in French, the name then being in English, the Board of Trade of Metropolitan Quebec and in French, la Chambre de Commerce de Québec Métropolitain.

The act repeals all former statutes which relate to the corporation and the bill in itself amounts to a restatement of the corporation's organization, its functions, duties and powers.

The problem that seems to exist at the present time as far as those who may be opposed to our bill is concerned relates to the fact that we are asking to add the word "metropolitan" to our name. Perhaps it might be good here to mention what the dictionaries say about "metropolitan". Unfortunately I do not have an accurate definition of the word in English from the Webster or

Oxford dictionaries, but according to French dictionaries, and I should like to refer to the French Robert dictionary, the definition of metropolitan indicates that this word has reference or applies to a capital. According to Larousse the word metropolitain refers to the capital of a state. According to Ouillet this word refers to a capital, and by extension to a large city.

Our proposal, Mr. Chairman, of adding the word "metropolitan" and "metropolitain" to our corporate name is to better define in the mind of the public, and in especially the minds of some 5,000 people who are in correspondence annually with the board of trade from outside Quebec, the territory which for many years has been the object of the Quebec board of trade's major endeavours.

I should like here to mention some of the things that the board of trade of Quebec has been doing in the interest of the metropolitan area. It has, for instance, worked for the sharing of the sales tax for the whole Quebec region. It has initiated inquiries on tourism for the entire region. It has promoted and organized what is well known to all of you gentlemen, the famous winter carnival which has been most profitable not only to metropolitan Quebec. I was told by the president of the carnival last year that for the last week end of festivities, rooms were reserved from Three Rivers down to St. Jean-Port Joli to accommodate people from everywhere who had come for this last week end of the carnival. Surely this initiative is of great benefit to metropolitan Quebec, the district of Quebec and a greater region than the one covered by the district of Quebec, and I speak now of the judicial district of Quebec.

The board of trade has participated in the preparation of or has prepared a report on the cement industry which eventually brought about the establishment of one of the largest and most modern cement plants in Canada. That plant is situated in the municipality known as Villeneuve. Villeneuve is outside the limits of the city of Quebec but it is within what might be known as metropolitan Quebec.

Several studies were made and reports submitted in respect of the port of Quebec, all for the purpose of directing more trade to the port of Quebec.

The Quebec board of trade has made representations and submitted reports in connection with improving air services for the metropolitan area and for the establishment of a new airport, which airport as you all know is not located within the city limits but within another suburban municipality known as Ancienne Lorette.

Recommendations have been made by the Quebec board of trade in respect of the establishment of a postal terminal and we also are responsible, to some extent, for the door to door mail delivery in the whole area, not only within the limits of the city of Quebec.

In 1954-55 the Quebec board of trade was most anxious to establish a year round contact by highway with Chicoutimi, and the government was not convinced that this was—the expression in French is "rentable". The board of trade took the initiative of accepting subscriptions from several members of the board who invested an amount of \$10,000 to keep that road open or part of the road open and eventually convinced the government that it was feasible and was in the interest of improved trade and industry in that whole area.

The Quebec board of trade submitted a brief supporting the establishment of a t.v. station in Quebec and has also worked towards the establishment of a C.B.C. t.v. station which is about to go into operation shortly. The first station was established in Quebec in 1954. It is a private station.

The board of trade of Quebec also submitted a brief to the Fowler commission on radio and t.v., and I think I am not mistaken when I say that it was probably the only one which presented such a brief to the commission.

The Quebec board of trade presented a brief on the economic prospects of the Quebec metropolitan region. This brief was submitted in 1958 to the royal commission on economic prospects in Canada.

The board submitted briefs on export trade and has taken part in arbitration of business hours in the entire Quebec region. It has published a tourist map on one side covering old Quebec and on the other side the whole area, and I think last year distributed 35,000 copies of that map. Surely, gentlemen, this was not just done for the city of Quebec.

I am taking the time of this committee to mention these things simply to establish that the Quebec board of trade does not have limited activities, but activities which spread beyond the limits of the city of Quebec, and have been most beneficial to the whole area which comprises 10 or 12 local boards.

There has also been some work done in connection with improving the highways, and there was a brief submitted in connection with the installation of an ocean liner terminal at Wolfe's cove which has been in operation now for many years.

The board initiated a study in respect of the improvement of rail communications and, as you all know, there is now a fast train that runs out of Quebec in the morning travelling to Montreal in two hours and 45 minutes, returning to Quebec in the evening, enabling the businessman to make a business trip to Montreal, and vice versa, at a very attractive travelling rate. I submit that the Quebec board of trade had a lot to do in that connection.

The responsibilities and preoccupations of the Quebec board of trade, or of a board of trade which has its head office in the principal urban agglomeration of the metropolitan region, are definitely different I submit, from the board of a suburban municipality which can think and operate locally and is localized in its interests.

Some objection may be made to the fact that there might be some confusion with the name of a corporation which is not a board of trade or chamber of commerce and which was created at the initiative of the Quebec board of trade some years ago. This corporation is known in French as "Le Bureau d'industrie et de Commerce de Québec, Inc"., and in English as: "Industry and Trade Board of Greater Quebec Inc." That organization or corporation was founded for the purpose of promoting and developing industries which were already established, and to look around to see if there was a possibility of finding new industries to establish themselves in the region of Quebec. The purpose of that corporate entity, different from the Quebec board of trade, was to do certain things which the Quebec board of trade might have wanted to do if they had been within its jurisdiction, and to obtain the financial co-operation of local boards to undertake certain things which were quite costly.

At the time when this was created the industrial commissioner of the city of Quebec had ceased to exist. It was felt that instead of having a man who was appointed and paid by the city of Quebec to act as industrial commissioner they would create this new corporation which would fulfil the functions that had been carried out by the person who had been in the position of industrial commissioner of the city of Quebec.

With your permission, Mr. Chairman, before completing my presentation I would like to refer to the fact that Quebec city is the capital of the province of Quebec. Greater Quebec or metropolitan Quebec embraces an area in which possibly 350,000 people reside. It is felt by the Quebec board of trade that because of its situation it would be quite proper for it to be given the right to add to its name the word "metropolitan". It feels that in some respects it is in the same position in the province of Quebec as is Winnipeg in Manitoba, Vancouver in British Columbia or Toronto in Ontario. It was not very long ago, Mr.

Chairman, that the Toronto board of trade obtained from your committee the right to add to its name the word "metropolitan".

I would like to point out here that the matter of prestige is very important as far as the Quebec board of trade is concerned, because the Quebec board of trade has representation on the Chamber of Commerce of Canada and is also represented on the council of the International Chamber of Commerce. It is felt that because of the things it has done in the past and the things it is called upon to do, its prestige would be increased if the word "metropolitan" was added to its name. This addition gives no additional power whatsoever. It does not give any jurisdiction over the other areas. The local boards can continue to do the things they have done in the past; it simply adds to the prestige of the Quebec board nationally and internationally.

Furthermore, I would like to point out that of the approximately 1,500 members of the Quebec board of trade, about one third are not domiciled and do not reside within the limits of the city of Quebec. All the important and large industries in that area—and I think that covers the south shore also—are members of the Quebec board of trade.

In case the committee is interested, Mr. Chairman, I have here a list, which may not be the final list but which is a long list, of corporations and of individuals who are successful in business in that large metropolitan area and who are active members of the Quebec board of trade.

That, Mr. Chairman, covers my submission.

The CHAIRMAN: Acting upon the advice of the two authorities surrounding me here, I would suggest that Mr. Guay should introduce those who are opposing this bill, that they then make an opening statement, and that we will then come back to the preamble and to the witnesses.

Mr. St. Laurent, would you be good enough to stand down for the moment.

Mr. Guay, are you introducing witnesses or are you speaking to the bill?

Mr. GUAY: I will introduce, Mr. Chairman.

(Interpretation):

Mr. GUAY: Mr. Chairman, contrary to rumours in the area of Quebec, I do not wish to object to this bill for chauvinistic reasons. If I oppose it, it is because I know the problems in this region in the province of Quebec very well. I must admit that within the regional organization the problems which concern metropolitan Quebec are not necessarily the same as those of Quebec or the city of Quebec.

The most pertinent argument to my mind is that of the autonomy of the chambers of commerce. Autonomy means just one thing, and that is that in the next two or three years the regional chambers will perhaps disappear.

(Text)

Mr. BASFORD: Mr. Chairman, I thought Mr. Guay was simply introducing the people who are opposing this bill. Is he making a statement in connection with the bill?

The CHAIRMAN: I was not sure whether Mr. Guay was acting as a spokesman on the preliminary explanation or whether he was going to introduce the witnesses who would give the explanation. Would you be kind enough to clear that up in the minds of the committee, Mr. Guay? Are you going to give the explanation of your group's position in so far as the group is concerned?

(Interpretation)

Mr. GUAY: I do not take the place of those who are going to give testimony; I simply wish to make a preliminary statement.

I have received 30 to 35 telegrams from chambers of commerce. We have 4 witnesses with us this morning.

The board of trade for metropolitan Quebec is looking after the interests of this region and the regional board of trade which groups 12 boards of trade . . .

* * *

Note: The remainder of the proceedings of the morning sitting is not available. (*See Minutes of Proceedings.*)

AFTERNOON SITTING

The CHAIRMAN: I call the committee to order.

I am happy to report that there have been some negotiations between the applicant and the respondent. Perhaps Mr. St. Laurent will explain just what agreement they have reached.

Mr. ST. LAURENT: I am sure it was the desire of the board of trade of Quebec, as well as of the other boards of trade who are represented here, to try to reach some agreement that would put an end to this discussion which seemed to be going to last much longer than any one of us would have hoped. So, after consulting with the powers that be so far as the Quebec board of trade is concerned, I came here this afternoon to propose—and this has been suggested—to those who were objecting to the word “metropolitan” that we drop the word “metropolitan” and replace it by the words “district of Quebec” so the name of the corporation, in English, would be The Board of Trade of the District of Quebec and in French it would be la Chambre de Commerce du District de Québec. We would make a further change in section 3 in the first paragraph where reference is made to the metropolitan area of Quebec, replacing that term by the words “of the city and district of Quebec in particular and of the province of Quebec and Canada in general”. We suggest in section 3 (c) that the words in the 16th line, “and metropolitan area of Quebec”, be replaced by “and district of Quebec” so that it would read “and other trades in the city and district of Quebec”.

Mr. MOREAU: I presume, Mr. Chairman, this will still satisfy the status seeking on the part of the Quebec Board of Trade.

Mr. ST. LAURENT: In line four of section 3 the words “metropolitan area of Quebec” should be replaced by the words “district of Quebec”.

The CHAIRMAN: Do I take it, Mr. St. Laurent, that you are proposing three amendments in clause 1 and the same amendment twice in clause 3? Am I correct?

Mr. ST. LAURENT: Yes. The name of the corporation in English and French will be changed in section 1 by, in the English text, replacing the words “Board of Trade of Metropolitan Quebec” by the words “Board of Trade of the District of Quebec”. That is, we suggest the deletion of the word “metropolitan” and the substitution of the words “the district”. In the French text the words would be “la Chambre de Commerce du District de Québec”, deleting the word “métropolitain”.

Mr. GRÉGOIRE: Accepté.

Mr. ST. LAURENT: Mr. Chairman, in clause 3 (c) we would replace the words “metropolitan area” by the word “district”. It would then read “in the city and district of Quebec”.

The CHAIRMAN: Have you finished, Mr. St. Laurent?

Mr. ST. LAURENT: Yes, I have.

The CHAIRMAN: Will Mr. Guay please say something so we will be sure that we are on common ground. Is the proposed amendment agreeable to those who were opposing the original bill?

Mr. GUAY: Yes, it is.

The CHAIRMAN: You have nothing more to add?

Mr. GUAY: No.

The CHAIRMAN: I suggest that we consider the sections and when we reach the necessary stage someone from the body of the committee should move the necessary amendment.

I call the preamble. Shall the preamble carry?

Preamble agreed to.

On clause 1—*Name in English and French.*

Shall clause 1 carry?

Mr. LLOYD: I move that clause 1, subsection (1) be amended as recommended.

Mr. BERGER: I second the motion.

The CHAIRMAN: It is moved by Mr. Lloyd, seconded by Mr. Berger, that clause 1 subclause (1) be amended as recommended to the committee.

Amendment agreed to.

Clause 1, as amended, agreed to.

Clause 2 agreed to.

On clause 3—*Objects.*

Mr. GRÉGOIRE: I move the amendment, seconded by Mr. Guay, that the clause be amended as recommended.

The CHAIRMAN: There is now a motion to amend clause 3. It is moved by Mr. Grégoire, seconded by Mr. Guay, that clause 3 be amended to read:

The objects of the corporation are to promote the development of any lawful trade or industry, and to foster the economic and social welfare of the city and district of Quebec in particular, and of the province of Quebec and Canada in general...

Amendment agreed to.

We now come to 3(c).

Mr. BERGER: I move that we change subclause (c) as recommended.

The CHAIRMAN: It is moved by Mr. Berger and seconded by Mr. Guay that subsection (c) be amended to read:

(c) to organize, if necessary, a stock exchange and to promote the centralization of the grain, produce, provision and other trades in the city and district of Quebec.

Amendment agreed to.

Clause 3 as amended agreed to.

Clauses 4 to 15, inclusive, agreed to.

Title agreed to.

Does the bill carry as amended? Shall I report the bill as amended?

Bill as amended agreed to.

There is one other matter.

I would like to congratulate the respondents and the applicants. It was quite a lesson to the English Canadians to see how well our French Canadian confreres can resolve their differences.

Mr. ST. LAURENT: I thank you very much, Mr. Chairman, for having given us all this time. I wish to express my sincere thanks to the committee for having been so patient with us. Possibly we were not too clear in our explanations at some times but I gather that now we have reached this agreement the committee is satisfied. I am sure the Quebec board of trade will be very happy about it.

The CHAIRMAN: Due to the electronic mechanisms we were unable to get all the translations this morning, and this now poses a problem. In view of the happy resolution of our differences I would welcome a suggestion from the committee.

Mr. GRÉGOIRE: The solution I might suggest is that the Chairman of the committee report to the house that it is necessary to instal mechanical devices or electric tape recorders in all committee rooms.

The CHAIRMAN: I might further point out that this room will soon be ready for the same type of equipment as that installed in room 308.

Mr. GRÉGOIRE: We have it now.

The CHAIRMAN: It is not quite finished.

Mr. GRÉGOIRE: I think we have been told that our remarks have been recorded.

The CHAIRMAN: Perhaps Mr. Small can tell us.

Mr. Alex SMALL (*Director of Legislative Services, House of Commons*): There is just a shortage of connectors. Once the connectors are available this will be set up in the same manner as room 308. Our next phase will be to go into all other committee rooms as quickly as possible.

The CHAIRMAN: In the meantime, however, we all appreciate Mr. Grand-maison coming here.

Mr. GRÉGOIRE: If the report does not make sense, then there is no point in having it printed.

Mr. LLOYD: Leave that to the steering committee.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

CANADA.

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

(THURSDAY, OCTOBER 1, 1964)

Respecting

Bill S-35, An Act to amend the Corporations and Labour Unions
Returns Act.

WITNESSES:

(The Hon. Mitchell Sharp, Minister of Trade and Commerce; Mr. W. E. Duffett, Dominion Statistician; Mr. H. F. Herbert, Director, Planning and Development Branch, Department of National Revenue; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison	Frenette	Monteith
Aiken	Flemming	More
Armstrong	(Victoria-	Moreau
Asselin	Carleton)	Munro
(Notre-Dame-de-	Gelber	Nowlan
Grâce)	Grafftey	Nugent
Basford	Gray	Otto
Bell	Grégoire	Pascoe
Berger	Greene	Ryan
Blouin	Hales	Rynard
Cameron	Jewett (Miss)	Scott
(High Park)	Jones (Mrs.)	Tardif
Cameron	Kindt	Thomas
(Nanaimo-Cowichan-	Klein	Vincent
The Islands)	Lloyd	Wadds (Mrs.)
Caouette	Macaluso	Wahn
Côté	Mackasey	Whelan
(Chicoutimi)	McCutcheon	Woolliams—50.
Douglas	McLean (Charlotte)	

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, July 13, 1964.

Ordered,—That the name of Mr. Kelly be substituted for that of Mr. Guay on the Standing Committee on Banking and Commerce.

WEDNESDAY, July 15, 1964.

Ordered,—That the name of Mrs. Jones be substituted for that of Mr. Chaplin on the Standing Committee on Banking and Commerce.

THURSDAY, July 30, 1964.

Ordered,—That Bill S-37, An Act respecting The Guarantee Company of North America, be referred to the Standing Committee on Banking and Commerce.

(Note: The Proceedings on this Private Bill were not printed.)

MONDAY, September 21, 1964.

Ordered,—That Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act, be referred to the Standing Committee on Banking and Commerce.

WEDNESDAY, September 30, 1964.

Ordered,—That the names of Messrs. Greene and Munro be substituted for those of Messrs. Morison and Kelly on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House

MINUTES OF PROCEEDINGS

THURSDAY, October 1, 1964.

(7)

The Standing Committee on Banking and Commerce met at 10.10 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Douglas, Gelber, Gendron, Gray, Greene, Macaluso, McLean (*Charlotte*), More, Nowlan, Otto, Pennell, Ryan, Rynard, Vincent, Whelan—(20).

In attendance: The Hon. Mitchell Sharp, *Minister of Trade and Commerce*; Mr. W. E. Duffett, *Dominion Statistician*; Dr. S. A. Goldberg, *Assistant Dominion Statistician*; Mr. D. C. Blyth, *Director, National Accounts and Balance of Payments Division, Dominion Bureau of Statistics*; Mr. D. A. Traquair, *Administrator, Corporations and Labour Unions Returns Act, Department of Trade and Commerce*; Mr. H. F. Herbert, *Director, Planning and Development Branch, Department of National Revenue*.

The Committee proceeded to consideration of Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

On motion of Mr. Cameron (*Nanaimo-Cowichan-The Islands*), seconded by Mr. Whelan,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill S-35.

On Clause 1

The Chairman called Clause 1 and introduced the witnesses.

The Minister made a brief statement and answered questions, assisted by Mr. Duffett, Mr. Herbert and Mr. Traquair.

The questioning being concluded, the Minister withdrew.

Mr. Douglas, seconded by Mr. Aiken, moved that the Canadian Labour Congress and the Canadian Chamber of Commerce be given the opportunity of appearing before the Committee, and if they wish to do so they should be asked to so indicate to the Chairman within a week.

Mr. Côté (*Chicoutimi*) moved, seconded by Mr. Gendron, that the Quebec Federation of Labour and the Confederation of National Trade Unions also be given the opportunity to appear.

The motion, as amended, was carried.

At 11.50 o'clock a.m., on motion of Mr. Gray, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, October 1, 1964.

(All the evidence adduced in French and translated into English was recorded by an electronic recording apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.)

The CHAIRMAN: Gentlemen, I see a quorum and I invite you to come to order.

The matter before the committee this morning is the consideration of Bill No. S-35, to amend the Corporations and Labour Unions Returns Act.

I might say that there is one formality which I suggest we should deal with at once, and this is a motion in regard to printing. I would invite a motion from the committee that we receive authorization for printing. For your guidance I might say that in the past the committee has authorized the printing of 750 copies in English and 300 copies in French of the minutes of proceedings and evidence. I merely mention that for your information.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that authorization be given for the printing of 750 copies in English and 300 copies in French.

Mr. WHELAN: I second that motion.

The CHAIRMAN: Are you ready for the question? All those in favour? All those opposed?

Motion agreed to.

The CHAIRMAN: Gentlemen, we are privileged to have with us this morning the Hon. Mitchell Sharp, Minister of Trade and Commerce, who needs no introduction. On his immediate right is Walter E. Duffett, dominion statistician. To his right is Mr. D. A. Traquair, administrator of the Corporations and Labour Unions Returns Act. We also have Mr. H. F. Herbert, director of the planning and development branch of the Department of National Revenue, Dr. S. A. Goldberg, assistant dominion statistician of the dominion bureau of statistics and Mr. C. D. Blyth, director of the bureau of statistics who is also connected with the international balance of payments division.

With your approval I will follow the usual procedure, that is to call the first clause of the bill, and then I will invite the Minister of Trade and Commerce to make a statement. Following his statement I will open the meeting to questions so that we can hear the witnesses who are now before us.

On clause 1—*Relieving provision*.

The CHAIRMAN: Shall clause 1 carry?

I will now invite the minister to make a statement if he wishes.

Hon. MITCHELL SHARP (*Minister of Trade and Commerce*): Mr. Chairman, gentlemen, during the second reading of this bill I described its purpose. Perhaps for the convenience of the committee I might summarize it very briefly. At the present time the corporations covered by the Corporations and Labour Unions Returns Act are required to supply financial information of a similar kind to both the dominion statistician and to the Department of National Revenue. Undoubtedly there is a duplication here for the taxpayer. Indeed, the duplication is of such a character that many corporations supply to the dominion statistician, under the Corporations and Labour Unions Returns Act, financial information which they already supply under the Income Tax Act. Some

of them say "Here are the returns we filed. They seem to us to satisfy your requirement as well as the income tax requirements."

There is also duplication within the government. The dominion statistician is required to tabulate, analyse and publish the information he receives under this act. The Minister of National Revenue follows an almost identical operation in the course of producing the "green book" of taxation statistics. Having in mind this duplication, the cabinet directed that a study be made of the economies that might be achieved by minimizing or eliminating the duplication, and after consultation among all the interested departments the dominion statistician recommended the amendments proposed by this bill.

In brief, these amendments eliminate the need for filing a separate financial statement under this act by giving the dominion statistician access to the financial statements filed with the Department of National Revenue by corporations. In order to protect the secrecy of the income tax returns the bill eliminates or removes the strictly limited access that was given to certain government officials for policy reasons to individual returns which are now filed under the Corporations and Labour Unions Returns Act.

Perhaps I should say a word about that because some members of the committee may be concerned about restricting access to information that is now supplied under the Corporations and Labour Unions Returns Act. The study that the cabinet put in hand revealed that the policy needs of the government departments for information about corporations could be satisfied either from other sources or from summaries prepared by the dominion statistician which did not disclose the operation of individual firms. This is an important point. I noticed that there are some members in the house who were critical of this bill because it enlarged access to financial information filed by corporations under the Income Tax Act. Less attention was paid to the more important effect of this bill which was to protect or to restore the secrecy of financial information given by individual corporations which was required to be filed under the Corporations and Labour Unions Returns Act. However, as I have said, the study that was put in hand by the dominion statistician at the request of the cabinet showed that it was not necessary to make all the returns filed under this act available to government officials for policy purposes, that all the needs could be satisfied either by asking the corporations to let the government have access to information that they requested or, alternatively, by summaries which did not reveal the position of individual corporations.

During discussions on second reading several members asked me to express an opinion on the utility of the act itself. My general comment on this question is that it is premature to reach a conclusive opinion on how useful this act is, and I do not think that either I or any member of this committee could reach a conclusion until the first report is published, and that will be some time before the end of the year.

Looking at the speech made by the then minister of justice, Mr. Davie Fulton when he introduced this bill, it seems to me that he made rather extravagant claims. On the other hand, there is no doubt that this act will provide a good deal of interesting information not now available about the extent of foreign ownership, as well as information about a variety of payments to non-residents such as dividends, interests, royalties, classified in a way that was never possible before. The dominion statistician can, of course, testify that this is so. So that while I think that some of the expectations aroused by Mr. Fulton cannot be realized, my present view is that the act will provide useful information as a background for policy decisions.

Now, as with any novel piece of legislation, experience has shown that this act has some deficiencies. It is our view, however, that it would be premature to propose substantive amendments. The amendment that is before you today is not a substantive amendment going to the root of this legislation. It deals only with administration and with the simplification of methods of collection. However, I do not think that we should propose substantive amendments until there has been an opportunity for the government, for parliament, and for the public, to study the first report and to ascertain whether the information that is available and can be published is of a kind that the government and parliament and the public need for the purpose of studying this very serious question of the extent and implications of foreign ownership.

The CHAIRMAN: Thank you, Mr. Sharp. Before I invite questions from the committee I suggest that you may direct questions to any one of the witnesses. If they feel, in their collective wisdom, that another witness can better answer the question, they will pass it along.

There will be a further meeting of the steering committee, as the present witnesses do not necessarily include all the witnesses that the committee may wish to hear. That question was raised earlier on and I am bringing it to your attention. As you raise your hand, the Chair will attempt to state your names. I invite questions at this time.

Mr. AIKEN: Mr. Chairman, I have several questions and some of them I want to address to the other officials who are here. Firstly, I would like to address a question to the representative of the Department of National Revenue, Mr. Herbert.

Mr. Herbert, what concerns me, and what did concern me on second reading of the bill, was the fact that there appears to be some change in the security provisions of income tax returns of a corporation. I appreciate that the dominion statistician is a government official and that there is a good deal of security within the department, but does the Department of National Revenue have any concern at all for the increase in the number of the people who may examine income tax returns?

Mr. H. F. HERBERT (*Director, Planning and Development Branch, Department of National Revenue*): We certainly would not want to see the gates opened wide to the examination of income tax returns. I think the public of this country was quite well satisfied in the past with the confidentiality of the information they gave us, but I must say that in the case of the dominion bureau of statistics we regard their reputation for the preservation of secrecy as equal to if not exceeding our own. To tell a few tales out of school, there were times in the past when we would have liked to receive information from them for our purposes and we have been shown the door.

Mr. AIKEN: But this situation is now going to be changed because you are now going to have an interchange of information.

Mr. HERBERT: We still cannot get the information. This is very one-sided. The dominion statistician is now to have access to information from corporations although under the Corporations and Labour Unions Returns Act he does have access to about 90 per cent of the information anyway.

Mr. SHARP: This question was raised by Mr. Lambert when he asked what was the degree of similarity between the information provided under this act and under the Income Tax Act with respect to financial information. As Mr. Herbert has said already, we receive, under this act, 90 per cent of the financial information that is provided under the Income Tax Act. Therefore, as far as the corporations that do report under this act are concerned, we already obtain, under this act, the information that is provided under the Income Tax Act, with certain exceptions that are rather irrelevant.

Mr. AIKEN: That was my next question. I think perhaps I should address it to Mr. Duffett. I would like to know what information is contained in the income tax returns that is not contained under the bill we are considering, for example, the statements of assets and liabilities, statements of receipts and disbursements of a corporation now included under the Corporations and Labour Unions Returns Act.

Mr. WALTER E. DUFFETT (*Dominion Statistician, Dominion Bureau of Statistics*): We are aware that this was a matter of concern to you, Mr. Aiken. What we have done is to have a copy made of the corporation income tax returns, and we have designated on it those items which are already obtained by the dominion bureau of statistics under this legislation and those items which are not, the latter being additional information to which we would have access. Now, if the committee would like to see samples they could be made available for you to look at.

Mr. AIKEN: I would like that very much. There are a few things which I would like to find out specifically, and one of them relates to assets, liabilities, receipts and disbursements; in other words annual statements. Are they now included in the Corporations and Labour Unions Returns Act?

Mr. DUFFETT: Yes. As Mr. Sharp pointed out, a number of corporations, in accordance with the provisions of the labour unions returns act, simply provided us with copies of financial statements such as they supply to the Department of National Revenue. It is provided in the Corporations and Labour Unions Returns Act that this is acceptable.

Mr. AIKEN: My next question is directed to the minister. I am sure that the government wants to maintain the security of income tax returns, therefore would it not be more in keeping with democratic principles to permit a corporation to file a notice with the dominion statistician under this act, permitting him to examine its income tax returns, rather than to make it compulsory? Maybe this would bring about the same result, but would it not perhaps be better to allow it to be done on a voluntary basis rather than opening the gate in any way to an examination of income tax returns?

Mr. SHARP: This is now permitted and some corporations do it. I have some examples here which, however, I do not think it is necessary to put forward because I think the point is well understood. Voluntary action would still leave the administration of it very complicated and would also have the effect I think that some corporations would be a little concerned about providing this financial information on the misunderstanding that they were giving it to someone who might reveal it.

Mr. AIKEN: I am sorry, perhaps you misunderstood me. My question was not directed towards filing a copy of the income tax return but merely towards filing a permission for the dominion statistician to examine it, as is provided in this act in a compulsory manner. Is this done?

Mr. SHARP: Perhaps the dominion statistician, who has had more experience with this, could answer it better.

Mr. DUFFETT: This is indeed a possibility, and this is what is done now. It says that the corporations may do this if they wish, and they do.

Mr. AIKEN: Do they file a copy of their income tax return with you or do they merely file permission with you to examine it?

Mr. DUFFETT: No, they file a copy of a financial statement which is identical to the one filed with the department. A number of corporations have, in addition, when filling out the claim for exemption that was provided for all corporations, pointed out to us that this information is filed with the income tax department. They have also suggested to us that it should be utilized there.

Now, to pursue your question a little further as to whether it might not be a good idea to make this thing voluntary, the economies involved in this proposal are of two kinds, one is an effort to reduce the duplicate reporting by corporations, and the other is to make it possible for the dominion bureau of statistics to take over the publication of the book on taxation statistics which is published by the Department of National Revenue. This will make it possible to eliminate a very expensive kind of internal duplication that exists within the government. For this purpose it is of course necessary for us to have access to the returns of all companies.

Mr. AIKEN: Well, Mr. Chairman, I do not want to take the time of other members at this meeting but there is just one more question which I should like to ask now, and then I could perhaps come back later.

Since the bill has become public knowledge have any representations been received from any individual corporations or organizations either in favour of or in opposition to the bill? Have there been briefs submitted on behalf of organizations such as the chamber of commerce, in opposition to the provisions of the bill?

Mr. DUFFETT: No, the bill became public knowledge when it was presented to the Senate in June. We have not heard any objections from any corporations or individuals. The bill has received a fair amount of publicity through various financial services. We have not received any formal representations in favour of it. We have had occasional conversations with chartered accountants, and members of my staff have met in Montreal during the summer with the Canadian Institute of Chartered Accountants, and in informal conversations the idea was commended. This was not put on the formal agenda. If it had been a matter of concern to them, they would have put it on their agenda, I assume.

Mr. AIKEN: I think that the cutting down of the filing of returns is a very worthy objective, and to that extent I have no objection to the bill. It is merely the cutting down of paperwork at the expense of security that concerns me. I should be glad to defer to some other member of the committee.

Mr. McLEAN (*Charlotte*): Is it not true that any shareholder of a corporation can obtain a financial statement of the corporation? I believe it is not secret. Your share is not published but you can write in and get the financial statement of the company.

Mr. SHARP: You can get the financial statement that is published, but I am not sure that you can get the one that is filed with the income tax department!

Mr. McLEAN (*Charlotte*): There is some difference there. They will tell you the amount of their sales but they will not write them down. If this is so, I do not see where the secrecy comes in. I can see that in the case of individuals there would be quite an amount of secrecy, but I do not see it in regard to corporations. Is this going to increase the paperwork of the corporations?

Mr. SHARP: It is going to reduce the paperwork considerably.

Mr. McLEAN (*Charlotte*): Because we are getting too much paperwork now in the corporations.

Mr. MACALUSO: Mr. Duffett, in reading the proceedings of the Senate committee on banking and commerce I was concerned to see that almost 90 per cent of the same companies are tabulated by the Department of National Revenue as by the dominion bureau of statistics.

Mr. DUFFETT: It may not be 90 per cent. The Department of National Revenue tabulates roughly 28,000 companies. We will be tabulating between 25,000 and 35,000 companies. Many of these companies are the same, in fact the vast majority of them are the same because it is my understanding that the Department of National Revenue tabulate all the large companies and a

sample of the smaller ones. Perhaps Mr. Herbert could better answer this in detail.

Mr. HERBERT: Our analysis in producing our "green book", is done in part on a hundred per cent examination of large returns and a sampling of small returns. The aggregate number that we analyse is very close to the aggregate number which the dominion bureau of statistics analyse, and to the extent that we are both looking at the large ones this is where the 90 per cent relativity comes in. It is not 90 per cent in terms of numbers but 90 per cent in terms of total profits and total assets. As you know, many of the returns which are filed with us are very small, many of them are semidormant or inactive companies, but they still must file returns under the income tax law. These are probably of minimum value to d.b.s.

Mr. MACALUSO: As I understand it, the purpose of the bill is to eliminate filing by one company of two returns. I also understand that the two departments would collaborate and that d.b.s. would be able to take over the function of the Department of National Revenue and would make use of their information. The only problem is the problem of security, of the officials of d.b.s. obtaining information from the Department of National Revenue dealing with capital stocks, payable taxes, revenues received, and so on, and of this information getting out to other parties and to the public.

Mr. SHARP: One of the points that may be overlooked is that under the act itself and under a section that is not being amended the corporations covered by the act are required to provide information about shareholdings that is published and that is available to the public.

Mr. MACALUSO: That is generally available anywhere?

Mr. SHARP: No. If you look at the information requested under section (A) you will find that the information is directed towards ascertaining the extent of foreign ownership, and that is information that is available to any taxpayer or to any Canadian. That information is published.

Mr. MACALUSO: It is general public knowledge.

Mr. SHARP: Yes.

The CHAIRMAN: Are there any further questions on this clause?

Mr. AIKEN: Mr. Chairman, I have another question I should like to ask. I should like to ask the minister why there has been a basic change in the bill which includes all corporations under clause 4 rather than a limited group of corporations which were previously included. As I understand the effect of clause 4, which will be the new section 14(a), it will be that there will now be no limit on the size of a corporation or its income or anything else, and it will now include all companies instead of a limited group of people.

Mr. SHARP: This is not strictly true, it is certainly not true about section B, that is information which continues to be gathered only from corporations included in the act. I will let Mr. Duffett deal with the question relating to section B so that the position will be quite clear.

Mr. DUFFETT: We will indeed have access to all corporation returns under this amendment. However, so far as the Corporations and Labour Unions Returns Act is concerned, it will still apply to the same group of corporations to which it now applies. Access to all corporations is necessary for a number of reasons. From a strictly administrative point of view I do not think it would be practicable for the Department of National Revenue to establish certain files to which we could have access and certain files to which we could not have access, particularly since from year to year the number of companies which come under the Corporations and Labour Unions Returns Act increases and changes. There may perhaps be as many as 2,000 additional companies coming under the Corporations and Labour Unions Returns Act each year. A further

reason for having access to all returns is the one that has been mentioned in connection with the "green book". If the dominion bureau of statistics is to take over publication and analysis of the green book, it becomes necessary for us to have access to all returns.

On the matter of confidentiality, the position of d.b.s. may perhaps not be fully recognized. The fact is that in the course of our regular activities we have access to information which, in my opinion, is infinitely more confidential than anything which appears in the returns received by the Department of National Revenue. We receive a variety of information on inventories on a monthly basis, outstanding orders on a monthly basis, capital expenditures, the international flow of funds, the imports and exports of individual companies, the use of materials, the average earnings of employees, the quarterly profits, and so on. All this is exceedingly confidential. We receive information on the assets and liabilities of corporations, and a very large amount of other data of a confidential character. So that confidential information is not strange to the bureau of statistics.

I think perhaps it might be appropriate to mention why it is that the Corporations and Labour Unions Returns Act was assigned to the dominion bureau of statistics in the first place. This was not a task which we particularly sought, I may say, and the reason why the job was assigned to us was described by Mr. Fulton in introducing the bill. If I may be permitted to do it, I would like to read a sentence of what he said.

It was suggested that since it is important that the confidential parts of the reports be kept strictly confidential, they should not be required to be filed with the departments of the secretary of state and of labour respectively, but with an organization which, from the very nature of its operations and functions, is accustomed to the receipt and custody of confidential statistics. It was represented to us that industry and business, as well as unions, are anxious to co-operate with the government in carrying out the purposes of this bill, and that the business segment especially would find it much more acceptable from this point of view if the returns were to be filed with the dominion bureau of statistics, which has established an enviable reputation, and has the trust and confidence of all those who are required to furnish returns to it.

MR. AIKEN: I have another question. To what extent can published statistics reveal facts and make them available to competitors in business which have a very limited field or in which there are a limited number of companies? This is one thing that also concerns me. It may cause no difficulty in a large field where there are a large number of companies on which the statistics would be published and would reveal nothing about any individual corporation, but to what extent are there limited lines of business where published statistics could reveal information to foreign competitors?

MR. DUFFETT: There are indeed in a country of the size of Canada a number of areas where there are relatively small numbers of firms operating. The problem of possible disclosure to a competitor is taken into account in both the Statistics Act and in the Corporations and Labour Unions Returns Act. The Statistics Act is more strict in this respect than the Corporations and Labour Unions Returns Act, but the latter act has a clause governing this point. Perhaps I might read it:

In any report described in subsection (1) the statistical summary and analysis contained therein shall be so presented or shown as not to disclose particulars of, or identify or permit identification of the source of, information contained in any statement comprised in section B of a return filed by a corporation or union as required by this act.

Mr. HERBERT: May I interject here? We are faced with the same problem with our "green book". There are certain industries where the number of participating companies is very few, but we have been careful to group those industries with other industries so that individual facts are not disclosed.

Mr. AIKEN: May I then ask whether the amendment to the act will bring about any change to the situation?

Mr. DUFFETT: I should like to add one further point. All three of the acts with which we are concerned, namely the Income Tax Act, the Corporations and Labour Unions Returns Act and the Statistics Act, have penalties for disclosure of confidential information. One does not ordinarily depend on penalties alone to prevent disclosure; we depend on careful internal arrangements and careful selection of the staff, and so on. As far as d.b.s. is concerned, I do not think an employee of the bureau has ever been subject to a penalty for leaking information because I do not recall any information being leaked, but it so happens that the penalty in the case of the dominion bureau of statistics is considerably more severe than in the case of the Department of National Revenue. In practice it does not mean very much but it indicates the determination on the part of those who created the legislation and who established the bureau to make sure that this matter was regarded very seriously by the staff. If, for example, an employee of the bureau of statistics were to disclose information which might have an effect on the market value of any product or article or which is used for speculative activities, he becomes liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding five years, or both. I consider this to be very substantial.

Mr. AIKEN: May I ask about the production of information in court? Is there any difference between information in the hands of the Department of National Revenue and information in the hands of d.b.s.?

Mr. DUFFETT: To my knowledge we have never been required to submit any material of a confidential nature to the courts.

Mr. HERBERT: You are asking me for a legal opinion. I can only say what I know of our own operations. I think there was a decision which said that in certain criminal actions we should be required to produce returns.

Mr. NOWLAN: It is the normal practice for the minister to write a letter, and that has been accepted by the court.

May I ask Mr. Herbert a question? Is this the first, shall we say, invasion of the confidentiality of national revenue returns?

Mr. HERBERT: Yes, this is the first change in law which does give access to our returns.

Mr. RYNARD: Mr. Chairman, in the proceedings of the Senate committee on banking and commerce I read that the Department of National Revenue now examines, punches and tabulates information on about 28,000 companies—this represents a sample of a total of perhaps 150,000 companies. It is also said that the staff of the dominion statistician will be required to make similar tabulations under the Corporations and Labour Unions Returns Act for about 30,000 companies. In his opening remarks today the minister said that they were one and the same, or at least almost the same.

Mr. SHARP: I am not a statistician and I will ask Mr. Duffett to answer this question.

Mr. DUFFETT: The answer is this, the Corporations and Labour Unions Returns Act requires corporations above a certain size to file returns, and there is now between 25,000 and 30,000 of those. In the preparation of the green book some 28,000 companies are analysed. These two groups of companies are not identical although they are largely so because the Department of National Revenue analyses the very large companies.

Mr. RYNARD: Can those two be brought together?

Mr. DUFFETT: No, they will not be brought together because the Corporations and Labour Unions Returns Act is designed to apply, by its terms, to companies above a specified size in terms of assets and earnings, whereas this analysis is designed to be typical of all companies of all sizes. The purposes are different.

Mr. SHARP: I should like to say a word on the desirability of the dominion statistician having the responsibility for publishing taxation statistics. As any member of the privy council knows, there is a constant problem of avoiding the decentralization of statistics gathering in the government. The dominion bureau of statistics was established originally for the purpose of centralizing the collection and publication of statistics so that, in a sense, the action that is now being proposed here, would have the effect of carrying another step forward this very desirable objective. As Mr. Duffett has said, the confidentiality of information is at least as well preserved in the bureau as it is in any department of government. My view is that there is no risk in giving the dominion statistician the responsibility for the publication of this report.

Mr. GELBER: Mr. Chairman, I am very interested in the mechanical processes anticipated in obtaining this information from the income tax returns. Do I understand that they would be obtained in the data processing centre here in Ottawa?

Mr. HERBERT: No, under this proposed change of law the copy of the corporation's return which ordinarily comes to Ottawa—which is not by the way the working copy which our tax assessors use—is a statistical copy routed through d.b.s. which will extract the data required to produce the statistic, and it is tabulated in the d.b.s.

Mr. GELBER: So the information will be mechanically obtained as envisaged in this amendment.

Mr. DUFFETT: So far as the d.b.s. is concerned what will happen is that information will be transposed ultimately to punch cards which will then be processed mechanically. The magnitude of this tabulation job is perhaps not readily realizable. It is a pretty expensive operation. Some measure of this is indicated by the work which the Department of National Revenue does now. They transcribe about 50 items from the financial statement for the 25,000 to 28,000 companies which amounts to about 1,250,000 items simply lifted from one piece of paper and put on to a punch card. This is not the end of the process because in the tabulating or reporting of material from corporation returns it is important that this should be consistent from one year to the next. So that, as there is in the Department of National Revenue, there will have to be some comparison with the previous year to be sure that there have not been writeups, writedowns or reorganizations of one kind or another which call for further work on the statistics to make them comparable.

I may say that I have had some personal experience with this problem and I realize what a substantial job we are taking over. Some years ago I worked in the research department of the Bank of Canada. At that time the Bank of Canada had a sample of some 700 corporations, and the analysing and tabulation of this took two senior people, one an economist and another a chartered accountant. We are confronted with a situation which involves not 700 corporations but 25,000 corporations, and I have no illusions about how big a job it is going to be.

Mr. GELBER: I am just wondering, Mr. Duffett, whether the objections do not, in some measure, stem from the feeling that this information could be obtained by a process done by the assessors. I am wondering whether you are not anticipating something much more mechanical.

Mr. DUFFETT: We will not use the returns used by the assessors.

Mr. GELBER: In other words, will the individual returns of the corporations not be studied in detail to obtain this information?

Mr. DUFFETT: It will be necessary to examine them carefully so as to be sure that there has been no change from year to year which would throw out the statistics, changes in arrangements of the facts on the balance sheet. We are exclusively concerned with the financial statement.

Mr. HERBERT: Perhaps I could briefly describe the mechanics of how the data gets from the return to the statistical book. The returns are examined by clerks who have been trained to tabulate the items in which we have been interested, such as gross assets, liabilities, and so on. They transcribe these by hand, and they examine the enclosed financial statements in order to get this data. This material is transcribed to sheets which are then key punched. We then go to the process of converting that to the magnetic tape, and, under programmed instructions the computer does the tabulations which summarize the assets by industry, by region, by size, and so on. That is the process in brief.

Mr. GELBER: Is it anticipated under this amendment that detailed work will be done in d.b.s. or in the Department of National Revenue?

Mr. HERBERT: It will shift from us to d.b.s., and with our grateful thanks because we are not statisticians but tax collectors. They will bring to it the expertise which is needed.

Mr. DOUGLAS: I should like to put a question to Mr. Duffett. You mentioned the fact that there is a great deal of information which you get from the corporations under this Corporations and Labour Unions Returns Act which is not contained in the income tax returns.

Mr. DUFFETT: This is true, but I think it is not quite what I said at the time. What I said at that time was that we obtained a great deal of information from a variety of other sources rather more confidential than the financial statement which would come to us through the Department of National Revenue. What you say is quite right, that the Corporations and Labour Unions Returns Act provides us, in addition to financial statements, with other kinds of information; that is what is called section A information on the ownership, the nationality of directors, and so on. This information is published. There is, in addition, information on payments to non-residents by all corporations to which the act applies and by all trade unions. In the case of the corporations, this kind of information on payments to non-residents which includes dividends, payments for copyrights, payments for management fees, and so on is required. This is really quite interesting information and it will continue to be collected. In all probability it will be supplied at the same time as firms make their income tax returns, and it will be routed through the collection process of the Department of National Revenue to us.

Mr. DOUGLAS: Do I take it then that the corporations will not in the future, in the event this bill passes, report to you directly as they have been doing in the past, and that you will be getting all your information through the Department of National Revenue?

Mr. DUFFETT: It will come to us indirectly through the Department of National Revenue but it will also constitute a report under the Corporations and Labour Unions Returns Act. In this respect, so far as the payments to non-residents are concerned, this simply utilizes the facilities of the Department of National Revenue as a channel through which material may be filed.

Mr. DOUGLAS: Are there any problems when the corporations report to you directly, as they are now required to do under the act? If you are not satisfied with the return how will you deal with this problem if you receive the information indirectly through the Department of National Revenue? Will you have to ask the Department of National Revenue to communicate with them or can you do it directly?

Mr. DUFFETT: It will be dealt with directly by us. Their obligation to report under the act is not diminished.

Mr. DOUGLAS: No, but is your authority to ask for further information in any way diminished?

Mr. DUFFETT: No.

Mr. DOUGLAS: You are satisfied you will be able to get all the information you have been able to get hitherto?

Mr. DUFFETT: Yes.

Mr. DOUGLAS: The primary purpose of the act, I take it, is to give to the country some idea of the degree of foreign ownership. Is that right?

Mr. DUFFETT: Correct.

Mr. DOUGLAS: Is the information you are getting now and will continue to get through the Department of National Revenue adequate for this purpose?

Mr. DUFFETT: I am not sure this is a question I should answer. I am a statistician, not a policy maker. I can say this, however, that it will be very helpful in that it will provide information which is not now available. It will go some distance to answering these questions.

Mr. DOUGLAS: In what way will it give you additional information which you are not getting now?

Mr. DUFFETT: It will provide the public with a great deal of information regarding the distribution of shares, the nationality of the officers and directors of foreign companies operating in Canada, and so on. This information is not only submitted to us, it is also available to the general public for their examination. The payments to non-residents, appears in section B, or the confidential portion of the act, which does include more information than we can now obtain. In connection with the work on the balance of international payments, some information along these lines is obtained, but for the items which it covers it will be more complete because it covers all the large companies.

Mr. DOUGLAS: How do you deal with the problem of shares which are held in trust? Are you able to get this type of information?

Mr. D. A. TRAQUAIR (*Administrator, Corporations and Labour Unions Returns Act*): We have not yet been able to get information from shares held in trust, we are not able to measure the magnitude of the problem. We know there are some shares that are held in trust, and in some cases a banker will hold the shares of a corporation as collateral for a loan that he has made. Until we can assess the magnitude of the problem, we will not be able to interpret how important it is.

Mr. DOUGLAS: What about the shares held by trust companies?

Mr. TRAQUAIR: This is in the same category.

Mr. DOUGLAS: Have you no idea of what the percentage of the total this might represent?

Mr. TRAQUAIR: We do not know yet.

Mr. DUFFETT: We will know in due course.

Mr. SHARP: This is one of the reasons why I said in my opening remarks that until we complete the analysis of the first year's returns we are not really in a position to know how adequate this legislation is for the purpose for which it is intended.

Mr. DOUGLAS: Once you get this information you will have some idea of the magnitude of the problem but you still will not have any solution as to how to apply this information. I think the problem is still before us.

Mr. SHARP: At least we will know how inadequate it is.

Mr. DUFFETT: When we know how serious are the omissions in the act we will have a better idea of it.

Mr. TRAQUAIR: In some cases a number of corporations have asked us whether they are the legal owners. In many cases the corporation itself does not know the beneficial owner of the shares.

Mr. DOUGLAS: What information are they required to give?

Mr. TRAQUAIR: Who is the legal owner.

Mr. DOUGLAS: They are not required to give the beneficial owner. After you have compiled this information, what general use is made of it, apart from the report?

Mr. DUFFETT: It becomes part of the general body of statistical information which is available for use in the country. One thing that attracts us as the dominion statistician about this is that it may make it possible for us to reduce somewhat the kind of information we obtain in other questionnaires. How far this can go I do not know, but it is our intention, once this machine is operating, to have a look at the entire range of corporation information which we obtain to see how this can be further streamlined.

Mr. BASFORD: Mr. Duffett was speaking a while ago regarding the representations which had been received from business on the operation of the act or the operation of the amendments. I was wondering whether you received representations from the Canadian Labour Congress or any suggestions for changes to these amendments.

Mr. DUFFETT: These amendments have very little effect on the labour side of the operation. The only effect is this: that, as the minister pointed out, the original legislation provides, for certain specified purposes officials of other government departments may have access to these returns. This clause is being removed so far as it affects corporations and so far as it affects labour unions. The labour unions therefore acquire an additional element of confidentiality in the process of this amendment.

Mr. BASFORD: Since the original act was passed have you received any complaints from labour?

Mr. DUFFETT: We received a number of inquiries on how the unions are expected to conform to the act. Any new piece of legislation has tag ends that have to be worked out, explained, and discussed, but there have been no formal objections.

Mr. TRAQUAIR: Yes, we met with the unions when the act was passed initially. We had two meetings with the unions and we set out to them what was possible under the act and what was not possible. The unions supplied to us information as a result of this meeting.

Mr. DUFFETT: The unions were concerned with problems of conforming to the act. They were not there to express views about the act itself and about its intentions.

Mr. BASFORD: They now appear to have no difficulty in conforming to it.

Mr. DUFFETT: That is right. So far as the unions are concerned the act I think is not unduly burdensome. A union is defined as an organization which has locals, and this means that the information is not obtained from all local unions all across the country. This would otherwise create very considerable difficulties but the act intends the information to be obtained from larger organizations which have pretty adequate accounts.

Mr. GREENE: Is there any information made available from the beneficial holders of shares, stock broker accounts or from financial houses which would enable you to complete the statistical data?

Mr. TRAQUAIR: No, only that obtained through registration.

Mr. GREENE: There is nothing in the registration which compels persons who normally hold stocks from naming the beneficial owner?

Mr. TRAQUIRE: That is right, there is not.

Mr. AIKEN: Mr. Chairman, I would like to probe just for a minute into the physical set-up of the new system, and to ask Mr. Duffett whether the people from his department go to national revenue and in that office do their summary of the returns, and particularly whether they will take from the national revenue any copies of returns to the point where they may create a second set of returns? My question is whether the names of individual corporations will ever come out of the Department of National Revenue or whether they will merely be tabulated right within the department's office. This is the thing that has really concerned me. I might say that I would be much more satisfied if they merely tabulated, in an impersonal way, the returns that they filed in the national revenue office.

Mr. DUFFETT: In fact this might be answered by Mr. Herbert, but the procedure is as we have described it; that in the first place there are two copies of the taxation returns, one is retained in the regional office or the local offices and is the one used for assessment. The one that is now used for statistical purposes will come to us first. We will take from it the information that we require, and we will necessarily have to take the name of the corporation because we want to be satisfied that that corporation has complied with the Corporations and Labour Unions Returns Act. The file will then be sent to the Department of National Revenue and will be put in the files. I expect there will be occasions from time to time when it will be necessary to refer back to this financial statement. If, for example, there is a communication from the company on depreciation or if there is reorganization of some sort, it may be necessary to refer back. In those cases we would go to the Department of National Revenue and ask to see the company's files. However, we must keep a record in the D.B.S. of the name of the company because we are required to satisfy ourselves that this company has reported and that it has reported correctly. Just to repeat what I said before, we get this information now to all intents and purposes. These yellow sheets contain some additional information which the Department of National Revenue gets for its own purposes and which will pass under our eyes but which is of no particular interest to us.

Mr. AIKEN: In other words, then, there will not be two places where there is a complete set of income tax returns of corporations, one in the Department of National Revenue and one in the d.b.s.?

Mr. DUFFETT: No.

Mr. AIKEN: The final resting place of the return, after you have taken what you need from it, will be back with the Department of National Revenue?

Mr. DUFFETT: Yes.

Mr. HERBERT: There will be one other copy, the main working copy in our district office, which is the one the assessor uses to beat the taxpayer with.

The CHAIRMAN: Are there any further questions?

Mr. GELBER: Mr. Duffett, can you give us any general idea of the number of personnel in your department who will be handling these individual returns?

Mr. DUFFETT: The establishment which was set up to look after the Corporations and Labour Unions Returns Act initially was estimated to be about 90. It is too soon yet to say how large this group will be. It will have certain additional duties in connection with the production of the green book. I suppose that a small number of these people will be dealing with the

individual returns while the others will be recording the information, tabulating it, adding it and so on. I think it is at this point difficult to say how many people will have detailed access to the data. Perhaps Mr. Herbert's experience is significant in this respect.

Mr. HERBERT: Within our work over the years in the production of the statistics in the green book we have had a staff of 22 clerks, and this has been fairly stable over the years, even with the growth of the number of corporations. By modifying our work we have been able to hold to that figure. It is envisaged that this entire group will transfer to d.b.s. and will carry on doing the same sort of work.

Mr. GELBER: The number of people involved is relatively small. It is not that large a problem in terms of the number of people who have access to these returns?

Mr. DUFFETT: We have handed a great deal of information to the dominion bureau of statistics which I think is rather more confidential than most of this.

Mr. GELBER: There is another point that interests me, and that is that we are going to have returns examined twice. The Department of National Revenue assessors examine the returns to get the information they require, and now you are going to be obliged to look at the returns. I presume the Department of National Revenue has a more detailed and therefore slower job.

Mr. DUFFETT: The Department of National Revenue job is a different one from ours. Ours is to assemble and tabulate the material. The Department of National Revenue will be concerned only with returns from an assessment point of view.

Mr. GELBER: Does the Department of National Revenue satisfy you that the return one year is comparable with the previous year and limit your job to that of a computation of totals.

Mr. DUFFETT: I think it will be our responsibility to satisfy ourselves that there has been no substantial change in the presentation of the data from one year to the next.

Mr. GELBER: Their assessor could not do that for you?

Mr. DUFFETT: He might, but we feel it would not be appropriate for us to deal with the assessors in the Department of National Revenue.

The CHAIRMAN: Are there any further questions?

The minister has another pressing appointment. He is prepared to stay, of course, but if you could raise all the questions on clause 1 the minister might then be excused, with the approval of the committee.

Mr. NOWLAN: I would like to raise one point while the minister is here. This has been referred to under clause 3 which repeals subsection 5 of section 14. I would like someone to comment on this.

As Mr. Duffett has stated, it has been shown in the yellow sheet here that there is some information required under this act which is not required by the Department of National Revenue. We referred to something which I think sometimes may be highly important. These are secret payments under patents, copyrights, royalties and such things, which may be going from a subsidiary here to another corporation, and there is a provision in section 5 which gives very wide powers to obtain information. That was put in deliberately as government policy which we thought at that time was desirable, and it has certainly been carried out by the present government with regard to foreign control, secret payments and so on.

What provision will there be under this act for obtaining that information if subsection 5 of section 14 is repealed?

Mr. DUFFETT: There will be no provision under this act for obtaining this information. This is a matter we have considered very carefully and which we have discussed with other government departments in order to know how they felt about giving up this access and whether in fact access to detailed information of this kind was important enough to justify the elements of duplication that were necessarily involved. The government departments, after considering this matter carefully, were of the opinion that they did not require the information.

During the period since the act has been in effect, no government department has approached us to obtain access to a corporation's returns for the purposes contemplated.

Mr. NOWLAN: That is only a period of a year or so.

Mr. DUFFETT: There has been a period of a year and a half since returns were in our hands.

Mr. NOWLAN: But there will not be any access to information—

Mr. DUFFETT: That is correct.

Mr. NOWLAN: —which will not be provided by the Department of National Revenue.

Mr. DUFFETT: I think the feeling generally is that if the government department—for example the Department of Finance—requires information of this kind, it is highly unlikely that a company would fail to provide it. It can be done in two ways. It could be provided directly or it could be provided by the company issuing to the department concerned a clearance to have access to the information in the hands of the dominion bureau of statistics. This is done now in connection with a certain amount of material which we collect occasionally.

If a corporation wishes to make information available for another government department and it does not wish to go to the trouble of making duplicate returns, they issue a clearance for that purpose.

Mr. NOWLAN: All you will be getting in the future is averages and computations of averages rather than specific cases?

Mr. DUFFETT: This is true, unless another arrangement is made.

Mr. NOWLAN: Where there are two corporations involved, one public and one private, information of that kind will not be available to you?

Mr. DUFFETT: It will not be available to government departments.

Mr. NOWLAN: Then government, in preparing policy, will have to use other sources of information or will have to use intuition, or whatever may pass for intuition, in formulating policy?

Mr. DUFFETT: Yes.

Mr. MACALUSO: May I ask a supplementary question?

The CHAIRMAN: Mr. Macaluso.

Mr. MACALUSO: I notice in the evidence of the Senate standing committee on banking and commerce that a question arises whether the advantages to be gained can be justified in view of what government departments will be giving up.

It has been stated that the requirements have been satisfied by summary tabulations which you have made for them. To which summary tabulations do they have access for information they cannot now obtain otherwise?

Mr. DUFFETT: There have been one or two cases in which they have required information which has its origin in the Corporations and Labour Union Returns Act but which did not involve access to individual returns.

Mr. TRAQUAIR: The question did concern particular returns, and rather than supplying the information to the department we were able to produce a tabulation which would show the information they wanted to have and which satisfied their inquiry.

Mr. MACALUSO: Is there any other information apart from this information? Is there any other source from which this information will be available?

Mr. DUFFETT: In the first place I should repeat that information regarding the degree of foreign ownership in the company will still be available as it is now; this is section A information. Information on these other details, such as payments for royalties and so on, is not generally available to the best of my knowledge. There may be cases where the companies themselves make this public, but detailed information by companies is not generally available.

Mr. GREENE: I am a little disturbed by some of your recent answers.

In regard to section 5 you say that no government department has made any inquiry of you in regard to the returns under this section in the past year. Is that correct?

Mr. DUFFETT: Yes.

Mr. GREENE: Or in the past year and a half. Does any other government department have any more right to information filed here than does the public under the sections that permit you to release this?

Mr. DUFFETT: No.

Mr. GREENE: Therefore there is no change in any way, shape or form? No government department has any rights to any information unless under statute. Is that correct?

Mr. SHARP: May I just make one point? It may be that a government department would say to the dominion statistician that they are interested in a particular question relating to the degree of foreign ownership or to payments that are made to non-residents. They may say to the dominion statistician that they would like to get as much information about that subject from his returns as they can without revealing the position of an individual company. The dominion statistician would have every right under this legislation to provide the government with such an analysis.

By having this information we are able to obtain summaries of a relevant kind to which the public itself would not have access because it would not be published in the report.

Mr. GREENE: I see. This is what was disturbing me. The kind of request to which you are referring was not made and was not anticipated. You did not anticipate specific requests about specific companies?

Mr. DUFFETT: This could quite properly have been made. If a government department had been engaged in compiling certain legislation and had written to me and said they required the return of the A.B.C. company for this purpose, I would have supplied it; but this has not happened.

Mr. GREENE: There again I am back on the same point. Can any department ask for specific information about a specific company under any section here and have it supplied?

Mr. DUFFETT: They can under this present legislation, but this right is being withdrawn by the amendment.

Mr. DOUGLAS: This is the point about which I would like to ask the minister. Under the legislation as it now stands any department of government can secure from the dominion statistician information—

Mr. DUFFETT: For a particular purpose.

Mr. DOUGLAS: —with regard to items such as patents and so on. By rescinding section 5, this process will be discontinued.

Mr. SHARP: That is right.

Mr. DOUGLAS: May I ask the minister why? Why are they watering down the act in this respect?

Mr. SHARP: This is the issue that is raised by this bill. This is the main issue. It has been found on further examination that the government departments do not feel it is necessary to see the individual returns. They can obtain the information about these payments or other information in a summary form which will serve their purposes just as well.

The bill withdraws the privilege of obtaining individual returns because it was felt that it was not worth the added expense of collecting two sets of documents in order to obtain it. It was felt that the economies that would be effected by the simplification proposed in the bill were more valuable than the right to have access to individual returns on the grounds that the relevant information could be obtained by summaries just as well as by looking at the individual returns of a company.

This is the decision that has been made by the government, and that is the issue raised in this bill.

Mr. DUFFET: May I add a word to that? The immediate reason for withdrawing this access was that we will now be using information obtained by the income tax people. It is to ensure that information obtained in the course of the operation of the Department of National Revenue will not by any indirect channel reach other government departments.

Mr. DOUGLAS: This really means now that in order to prevent this duplication other departments of government will be denied access to information which they now enjoy under the present legislation.

Mr. SHARP: That is right, and it is our experience that this information can usually be obtained. I would hesitate to say it can invariably be obtained but we have not had any adverse experience. Usually a corporation will give information of this kind to the government by way of a clearance to look at the individual returns. We have not had any experience to the contrary. Of course, we may have experience to the contrary, and this is one of the risks that is involved in the bill that is before the committee now.

Mr. DOUGLAS: In order for a department of government to obtain this information they would have to get clearance before obtaining access to particular information with regard to patents, copyrights, royalties and so forth?

Mr. DUFFET: The access in the act is not wide open; it is access for a specific purpose. It never was expected to be widely used. It is for official or authorized persons to have access in connection with the formulation of any law in Canada.

Mr. NOWLAN: That is a fairly wide phrase.

Mr. DOUGLAS: It would mean the Department of Labour could not seek information regarding trade unions or the Department of Finance would be denied information regarding royalties and patents enjoyed by a subsidiary.

Mr. DUFFET: By this channel, yes.

Mr. DOUGLAS: It seems to me we are giving up a great deal for a minor saving.

Mr. NOWLAN: The minister said this would avoid duplication. This will only be raised when some specific department or the government as a whole, or a minister responsible for formulating policy, asks some specific question on some phase or facet of this information. We would not generally be turning it out as we do with income tax returns or anything of that kind. It would be a specific inquiry raised by the government on a specific problem.

Mr. SHARP: May I put it in this way? In return for the possibility that at some time in the future we might want to know the royalties paid by an individual company, we should incur expenses of something like \$75,000 to \$100,000.

Mr. NOWLAN: Where would that expense be incurred?

Mr. SHARP: That is the cost of the duplication now involved.

Mr. NOWLAN: This would only be raised if you pass that specific section.

Mr. SHARP: No, as long as the legislation remains in its present form we must have duplicate returns. We do not think it would be advisable to open the income tax returns to anybody except the officials who are concerned with the assessments.

Mr. NOWLAN: The point is, is it not, that some of this information is not now included in your income tax returns but it is included under the general powers of this bill which are now being repealed.

Mr. SHARP: Yes, there is certain additional information, and this is a question of judgment. The government has examined the question carefully with all the departments. They are of the view that it is not worth while incurring this very heavy additional expenditure by the government and by the corporations themselves in order to provide, at some time in the future, under conditions that cannot now be foreseen, information about an individual corporation that that corporation would deny if asked for.

Mr. GRAY: Mr. Chairman, I think that the answer to the question that Mr. Douglas asked is that the amendment as proposed will also withdraw the right to look at the particular return of a particular labour union.

I also have another question which I should like to ask. I gather from what you said, Mr. Sharp, that the type of information required in the year of operation of this act for the purpose of policymaking by various government departments has only been in the nature of summaries or extracts of information, by industry and by size of the firm.

Mr. SHARP: That is right.

Mr. GRAY: The experience has not been to look at the individual returns.

Mr. SHARP: That is right. If you look at the act, the information required from trade unions appears under Section B, comprising:

- (i) a financial statement for the reporting period, consisting of
 - (A) a balance sheet showing the assets and liabilities of the union, made up as of the last day of the reporting period, and
 - (B) a statement of income and expenditure for the reporting period, in such form and containing such particulars and other information relating to the financial position of the union as may be prescribed by the regulations, and
- (ii) in the case of a union having its headquarters situated outside Canada, a statement showing separately total amounts paid or credited to the union in the reporting period by, on behalf of or in respect of members resident in Canada as or on account of each of the following, namely:
 - (A) initiation fees,
 - (B) members dues per capita,
 - (C) health and welfare assessments,
 - (D) death benefit assessments,
 - (E) strike benefit assessments,
 - (F) fines, and
 - (G) work permits.

The information about the affairs of an individual union is not such that, in the opinion of the Department of Labour, any policy decision would be made on the basis of that information. The information available from all the unions would be just as satisfactory as the information available from an individual

union. If it were not so, we would have every reason to think that the union would give us access to the information if requested.

Mr. GRAY: I gather that the same conclusion is reached as regards individual firms as well.

Mr. SHARP: Except that the information with respect to individual corporations is much more extensive because of the nature of the operations themselves.

Mr. GRAY: And therefore it has not proved necessary so far to formulate a policy with respect to the business firms nor to look for returns from individual firms. Am I right then in saying that the real reason for which you have proposed this change is to maintain intact the scheme of confidentiality under the Income Tax Act?

Mr. SHARP: Exactly, that is the primary purpose; otherwise, of course, we would have retained subsection (5) of section 14. I think the house and the members of this committee would really have some misgivings about making available to a government department information from tax returns for the purpose of formulating policy.

Mr. GRAY: Which, without this amendment, would have been available.

Mr. SHARP: Exactly.

The CHAIRMAN: Are there any further questions? If the committee will permit me, may I say that I had difficulty in getting the steering committee together. I do not say that in a critical way. When we did get together everybody was not represented. The question of what witnesses we should call was raised at that time and it was suggested by some that we might hear someone from the trade unions. It was decided that we would hold this bill in abeyance pending the hearing of witnesses who were immediately available. You have to make up your own minds on whether you want clause 1 to carry or to stand in view of the fact that you may want to hear other witnesses.

Mr. DOUGLAS: Have any other witnesses asked to be heard?

The CHAIRMAN: No, this was the only group from which it was suggested we might hear. We might also hear from the trade unions, but it was decided to forgo a decision pending the interrogation of the present witnesses, and then the committee would make up its mind.

Mr. DOUGLAS: Have the trade unions asked to be heard?

The CHAIRMAN: No, that is why the question was raised this morning.

Mr. AIKEN: Mr. Chairman, I think I was the one to raise the most violent objection to clause 4 which was the clause concerning confidentiality of income tax returns. I still feel uneasy about enlarging the present provisions, but it seems to be an amendment which would further the provisions of the original act for the purpose of the original act. There does not seem to have been any objection by any private organization and no great objection by the Department of National Revenue. The evidence seems to indicate that the confidentiality will be well preserved. I cannot see how calling any other witnesses would be of any assistance. I have been satisfied myself about the confidentiality provisions. I feel that, particularly since the returns will not reside in the d.b.s. but will return to the Department of National Revenue, there will be no greater circulation of these returns. Speaking strictly personally I am satisfied with clause 4.

Mr. SHARP: May I just say one word at this point? I do think that it will be very useful, when the first report under this act is filed, for the committee to give it consideration, and I would hope that the report would be referred to this committee for examination and discussion. I am not satisfied that the act is in such form as to accomplish the purposes that parliament intended when it was enacted, and I am sure that amendments will be appropriate.

The CHAIRMAN: The minister may then be excused, gentlemen, and the officials will remain for our consideration of the bill clause by clause if it is decided that we should proceed.

I would merely ask you whether you feel we should have other witnesses, other than those we have now before us. I would welcome some guidance from the committee.

Mr. BASFORD: Speaking for myself, I, like Mr. Aiken, am entirely satisfied.

Mr. DOUGLAS: I wonder whether it would not be wise at least to offer the trade unions an opportunity to appear to express whether or not they have any opinions on this matter, whether they are perfectly satisfied and whether they wish to appear.

The CHAIRMAN: Your suggestion is to write to them, I understand.

Mr. DOUGLAS: And ask them whether they are interested in appearing. If they are not interested, then we shall proceed.

The CHAIRMAN: In that case we would have to stand clause 1, as a matter of fact we will have to stand all the clauses.

Mr. MACALUSO: Does Mr. Duffett know whether any representation has been made by the trade union officials or by the C.L.C. or by any other officials? Have you had any discussion with them?

Mr. DUFFETT: There have been no representations, I suspect because the act has a negligible effect on them. The only effect it has is to make it impossible for the government departments to have access to their financial returns. Otherwise, it has no other effect.

Mr. MACALUSO: They are not hurt in any way by these amendments nor are they helped by them. What is happening is that they have to file one report instead of two.

Mr. DUFFETT: It does not affect them.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would it be possible that if the trade unions had been considered in these amendments their proceedings might have been simplified?

Mr. DUFFETT: Their proceedings could not be simplified in this way in the sense that trade unions do not make reports to the Department of National Revenue.

Mr. MACALUSO: I see no purpose in calling them.

Mr. AIKEN: They are not adversely affected at all; in fact, as I see it, it makes the ability to secure their returns much more difficult to the government.

The CHAIRMAN: I told the steering committee I would raise the question here.

Mr. DOUGLAS: I do not think the trade unions are adversely affected but it seems to me they should be given the opportunity to appear since they are the only other group involved.

The CHAIRMAN: I should think the Canadian Labour Congress would be the people to ask. If they are not interested in coming, then we will be able to proceed.

Mr. MORE: Mr. Chairman, are the labour unions affected at all by the amendments proposed here?

Mr. DUFFETT: No, except that their returns will have less restricted circulation than they might have had before.

Mr. MORE: Then they could have appeared before.

Mr. DOUGLAS: They may not have known any more than most of us that the Senate was considering the bill. I do not think they are adversely affected, but they may have some feelings about the comparison of treatment in that this legislation does affect corporations in certain ways. They may feel that there is some discrimination in terms of treatment. I do not know, as I have never had representations from them. If they do not have representations to make I do not see why we should not proceed, but I feel they should be given an opportunity to come here.

Mr. WHELAN: Knowing how efficient the C.L.C. is I would think they are quite aware of this because they follow all these things very closely. It is my understanding from meeting them that they keep in touch with all these things, and knowing how efficient they are I think they would have made representations here if they were at all concerned.

Mr. MACALUSO: I would think that with the amount of publicity this has had—I am speaking with somewhat more than a little experience with trade unions—if they had any interest in this we would have heard from them long before now. I speak on this not in opposition to it but I speak with a feeling that I know from personal experience the workings of the trade union movement and the people involved at the official level.

Mr. AIKEN: Mr. Chairman, I want to concur with what Mr. Douglas has said. I also feel that some organization which might represent the corporations ought to be given a similar opportunity. We have been sitting here and discussing this bill among ourselves. We have been assured that there have not been any representations. I, for my own satisfaction, would like to know that this bill has officially come to the attention of both the labour unions and the chamber of commerce, if that is the appropriate organization; that it has been considered and that no representations are to be made. I think it is our duty to these people. If nothing comes, then we will merely pass the bill.

Mr. DOUGLAS: I remind you that this bill was only sent to the banking and commerce committee last week. While we are familiar with the fact that it has been sent to the Senate, I do not know to what extent those affected are aware of it. It seems to me it would be a comparatively simple thing to put a phone call through to the Canadian Labour Congress and to the Canadian Chamber of Commerce asking them whether they want to make any representations. If they do not, let us meet and pass the bill.

The CHAIRMAN: Do you so move?

Mr. DOUGLAS: Yes, I will move this.

Mr. AIKEN: I will second it.

The CHAIRMAN: It has been moved by Mr. Douglas, seconded by Mr. Aiken, that communication be made with the C.L.C. and with the chamber of commerce, pointing out to them that they are entitled to make representations before the committee, if they so desire.

Mr. GELBER: Mr. Douglas spoke of an informal inquiry.

Mr. MACALUSO: Why cannot we make just a phone call?

Mr. AIKEN: I think that would be too informal.

(Translation)

Mr. CÔTÉ (*Chicoutimi*): Should you submit the problem to the Canadian Congress of Labour it might also be well to submit it to the Confederation of National Trade Unions as well as to the Quebec Workers Federation.

Mr. GRAY: Mr. Chairman, this is a good idea because this represents a group of 200,000 workers.

(Text)

The CHAIRMAN: The difficulty of the Chair is that I do not want to invite someone of whom you may be critical. I want to be clear to whom I am to send the invitations. I am not trying to be an obstructionist but I want to be clear on whom to invite.

Mr. DOUGLAS: My motion specifies the Canadian Labour Congress and the chamber of commerce. I understand Mr. Côté made an amendment including others.

The CHAIRMAN: I understand Mr. Côté's amendment to the motion is that the federated workers of Quebec be included.

(Translation)

Mr. CÔTÉ (*Chicoutimi*): Yes, Mr. Chairman.

(Text)

The CHAIRMAN: Is there any seconder on that?

Mr. GENDRON: I will second the amendment to the motion.

Mr. NOWLAN: I think there should be a time limit.

Mr. DOUGLAS: Let us say within a week or ten days.

The CHAIRMAN: Are you ready for the question? The motion as amended reads as follows:

That a notice be sent to the C.L.C., to the Canadian Chamber of Commerce and to the federated workers of Quebec to invite them to make representations regarding this bill to this committee, and to signify their intention within one week.

All those in favour of the motion? All those against?

Motion as amended agreed to.

The CHAIRMAN: Is it your wish to go through the bill clause by clause at this stage while we have our witnesses here and to stand the bill pending the return to this communication, or do you want to adjourn at this time?

Mr. GRAY: I would suggest that while we do not wish to inconvenience the officials who have come here, if we are going to get some suggestions from the groups that we have invited, perhaps we should examine this bill clause by clause after we have heard them.

The CHAIRMAN: I take it that the suggestion is that we should adjourn at this stage?

Mr. GRAY: I am prepared to move that we adjourn now.

Mr. NOWLAN: I second the motion.

The CHAIRMAN: It is moved and seconded that the committee adjourn until the call of the Chair.

Motion agreed to.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

ADA. BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

LIBRA (TUESDAY, OCTOBER 20, 1964)

Respecting

(Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.)

WITNESSES:

(Mr. W. E. Duffett, Dominion Statistician; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

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ON
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Armstrong	(<i>Victoria-</i>	More
Asselin	<i>Carleton</i>)	Moreau
(<i>Notre-Dame-de-</i>	Gelber	Munro
<i>Grâce</i>)	Grafftey	Nowlan
Basford	Gray	Nugent
Bell	Grégoire	Otto
Berger	Greene	Pascoe
Blouin	Hales	Ryan
Cameron	Jewett (<i>Miss</i>)	Rynard
(<i>High Park</i>)	Jones (<i>Mrs.</i>)	Scott
Cameron	Kindt	Tardif
(<i>Nanaimo-Cowichan-</i>	Klein	Thomas
<i>The Islands</i>)	Lambert*	Vincent
Caouette	Lloyd	Wahn
Côté	Macaluso	Whelan
(<i>Chicoutimi</i>)	Mackasey	Woolliams—50.
Douglas	McCutcheon	

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mrs. Wadds on October 19.

ORDER OF REFERENCE

MONDAY, October 19, 1964.

Ordered,—That the name of Mr. Lambert be substituted for that of Mrs. Wadds on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

REPORT TO THE HOUSE

OCTOBER 20, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

EIGHTH REPORT

Your Committee has considered Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act, and has agreed to report it without amendment.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issues No. 3 and 4) is appended.

Respectfully submitted,

LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, October 20, 1964.

(8)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Klein, Lambert, Lloyd, Mackasey, Moreau, Nugent, Nowlan, Pascoe, Pennell and Thomas—(15).

In attendance: Mr. W. E. Duffett, Dominion Statistician; Mr. D. A. Traquair, Administrator, Corporations and Labour Unions Returns Act, Department of Trade and Commerce.

The Committee resumed consideration of Bill S-35, An Act to amend the Corporations and Labour Unions Returns Act.

The Chairman reported that, as directed by the resolution passed at the last meeting, he had written to the Canadian Labour Congress, the Canadian Chamber of Commerce, the Quebec Federation of Labour and the Confederation of National Trade Unions, offering these organizations the opportunity to make representations on this Bill to the Committee. He read the replies into the record, indicating that the organizations concerned were satisfied with the intent of the Bill, and did not wish to appear.

On Clause 1

Mr. Duffett and Mr. Traquair were questioned and Clause 1 was carried on division.

Clause 2 was carried.

On Clause 3

Mr. Duffett was questioned and the clause was carried.

Clauses 4, 5 and 6, the Title and the Bill were severally carried, and the Chairman was directed to report the Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chair, on motion of Mr. Moreau.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, October 20, 1964.

The CHAIRMAN: I see a quorum, gentlemen, and I would invite the committee to come to order.

The members of the committee will recall at our last meeting, when considering bill S-35, we went through it clause by clause. At that time we heard the minister and the officials from the department. However, we stood each clause pending notification to the Canadian chamber of commerce, the Canadian Congress of Labour and, what turned out later, to be the Quebec confederation of workers, as well as to the confederation of national syndicates.

I am sure it would be interesting to members of the committee if I read a copy of the letter I sent out. This letter which I am about to read was sent out to Mr. Jodoin, but it is similar to the letters I sent out to the other organizations.

Dear Mr. Jodoin:

Bill S-35, an act to amend the Corporations and Labour Unions Returns Act, was recently referred to the standing committee on banking and commerce. Before reporting the bill back to the House of Commons, a motion was unanimously adopted that the Canadian labour congress be extended the courtesy of making representations before the committee regarding the amendments to this act.

For your convenience I am enclosing a copy of bill S-35. The committee is desirous of dealing with this bill as expeditiously as possible, and I would therefore respectfully ask that a reply be returned within one week.

Representations may be made in person before the committee, or in writing. For your information and without desiring to influence your decision whether to make representations or not, allow me to say that this legislation has as its purposes:

- (1) The elimination of the duplicate filing of some 25-30,000 corporate financial statements which must be filed with the dominion statistician under the act, and which are also filed with the Department of National Revenue for income tax purposes.
- (2) The elimination of duplication of the substantial load of analysis and tabulation of these financial statements which both agencies are now required to carry out. To attain these objectives it is necessary to give the dominion statistician access to corporate income tax returns from which he will record and tabulate financial statistics before they are filed with the Department of National Revenue. On occasion his staff may wish also to consult files of these returns held by the department—the files in question do not contain the forms used by departmental assessors, which are retained in the field.

To preserve the same sort of secrecy as is now accorded these financial statements, the corporations and Labour Unions Returns Act is being

amended (see section 3 of the amending act) to remove the right of access by departments, now provided by section 14(5) of the act, to corporation and trade union financial statements now filed under the act. Thus, while the amendment gives the dominion bureau of statistics access to corporation returns filed with the Department of National Revenue, it has the effect of adding to the confidentiality of the statements now filed with both organizations.

As you will realize, these changes affect trade unions only by removing the right of access to their financial returns by government departments, and would therefore add a measure of confidentiality in favour of trade union returns.

If you require further details about the procedures contemplated, the dominion statistician will be glad to provide them. His name is Walter E. Duffett, and his telephone number is 992-0031.

Yours sincerely,

Larry T. Pennell, Q.C., M.P.,
*Chairman,
Standing Committee on Banking
and Commerce.*

As I stated, similar letters went out to the other groups, as requested by the committee. But, as you would realize, necessary alterations were made. Letters went out to the chamber of commerce, to the Quebec confederation of workers and to the confederation of national syndicates.

I received the following letter from the Canadian chamber of commerce, under date of October 13, in reply to my letter of October 5. It is addressed to myself as Chairman of this committee.

Dear Mr. Pennell:

This will acknowledge with thanks your letter of October 5 inquiring as to the chamber's view with respect to the amendments incorporated in bill S-35.

The officers of the chamber have reviewed these amendments and wish to advise you that they are in accord with them. We regret the delay in replying to your letter but unfortunately, we were unsuccessful in reaching you by telephone at an earlier date.

Yours sincerely,

(Sgd.) D. L. Morrell,
General Manager.

We also received a letter from Mr. Jodoin, dated October 13 addressed to your Chairman, which reads as follows:

Dear Mr. Pennell:

I have for acknowledgement your letter of October 5 with reference to possible representations by the Canadian labour congress concerning bill S-35. May I first of all express my appreciation for your thoughtfulness and consideration in inviting the congress to make such representations.

My colleagues and I have given very careful consideration to bill S-35. We have examined it in the light of the Corporations and Labour Unions Returns Act both as to principle and details. If we understand the proposed amendments correctly, they would serve to eliminate

a certain amount of duplication that now exists and would add to the confidentiality of the returns now being made. We note, however, that the amendments are aimed primarily at the returns which are required by corporations; the bill is silent on part II of the act dealing with trade unions.

The Canadian labour congress has, on various occasions, stated its objection in principle to the Corporations and Labour Unions Returns Act. We did so in our memoranda to the government of February 2, 1961, December 11, 1962, and March 14, 1962. We understand that the function of the standing committee on banking and commerce is to deal exclusively with bill S-35 and accordingly our views on the act would not be germane to your work. The Canadian labour congress will seek a more appropriate opportunity to make further representations expressing its views concerning the act in general, and more particularly with regard to its administration as it affects trade unions. Our experience since the act took effect indicates that such representations would be in order. It is a matter of regret to us that your committee is apparently not the appropriate place for making such representations. Thanking you again for your courtesy, I am,

Very truly yours,

(Sgd.) Claude Jodoin,
President.

I also have a letter from the Canadian Manufacturers' Association dated October 16, 1964, addressed to Miss Ballantine, the clerk of our committee, which reads as follows:

Dear Miss Ballantine:

Thank you very much for your letter of the 15th, advising that if it is the wish of the C.M.A. to make representations to the standing committee on banking and commerce during its consideration of bill S-35, this can be arranged for the meeting on October 20.

The opportunity presented is greatly appreciated, but my organization has reached a decision not to make any representations concerning this bill. Under the circumstances, there will be no C.M.A. representation at the committee meeting on October 20.

Yours faithfully,

(sgd) Willis George,
Ottawa Representative.

I might say that while we did not formally extend an invitation, and the Chair was not directed to do so, our deliberations came to the attention of the Canadian Manufacturers' Association, who made oral inquiries, as a result of which I requested our clerk to send them a letter. I have read to you their reply.

I have had no reply from Mr. Legault, the secretary of the Quebec confederation of labour although I sent a letter, which was similar to the others, in French. Also, a week later I sent a telegram to him in French respectfully requesting a reply. I have received no answer from either of the two organizations.

I sent a request by telegram to the Canadian chamber of commerce and they have responded. But, as I say, the other two have not replied. The letters went out on October 5. Now, the direction of the Chairman was that one week

should be given for reply. After a week elapsed, or eight days, I sent a telegram, and still no reply. It is now October 20.

Mr. AIKEN: In view of what has been said I assume that no one is going to make representations, and we have done everything we can to cover that particular field.

The CHAIRMAN: If it is the committee's wish then, having stood all the clauses, I suppose it now is in order to go back over them and, if it is the wish of the committee, we then will carry them.

Mr. Duffett, has something to add since his appearance here last meeting.

Mr. W. E. DUFFETT (*Dominion Statistician, Dominion Bureau of Statistics*): Mr. Chairman, the Canadian institute of chartered accountants was in touch with me. I had a telephone call from the secretary of the institute yesterday afternoon inquiring about the procedures envisaged under the legislation. He wished to be reassured that there was no intention of extending access to income tax forms beyond that contemplated by this proposed legislation. He said they were in favour of the legislation and, if there should be an opportunity, he would wish me to convey this to the committee.

The CHAIRMAN: With that explanation, shall clause 1 carry?

On clause 1—*Relieving Provision.*

Mr. NUGENT: Mr. Chairman, I mentioned this before. I am wondering if there is some explanation why we have not had the first report under the act as it was and the information that it puts forward so that we might be able to form an opinion whether the method of return was adequate for the specialized purpose for which this information was sought.

Now, the problem of foreign control of Canadian corporations and so on is still very current. The Minister of National Revenue or the Minister of Trade and Commerce mentioned there would be a report in this connection coming up later this year. We have had no indication of when that report would be received. Has the committee been provided with any report so that we might peruse it? It seems to me that if we are considering an act which is going to change the method of making a report it is only common sense that we take a look at the work actually done under the act before in order to see if it needs changing.

Mr. DUFFETT: We are hoping it will be possible to get a report out before the end of the year. The reason there has not been a report until now is that the initial work and the setting up of the records required in order to produce a report are very laborious. Also, the process of deciding which firms shall be eligible under the act is laborious. I think we received claims for exemption from some 85,000 firms. Each of these claims had to be examined carefully and, in some cases, it was necessary to consult our legal adviser in order to determine whether or not the firms in question were eligible. In addition to this there is a problem of acquiring and training staff. It has not been possible until now to arrange the preparation of the first report.

Mr. NUGENT: Do I gather from what you have said that the act was not in force long enough for any concrete results to be tabulated under the act as it was?

Mr. DUFFETT: No tabulations have been made, but some concrete results exist in the form of filing of section A material regarding the ownership of the corporation with the Secretary of State for External Affairs and the Department of Labour in the case of labour unions.

Mr. NUGENT: That is merely the gathering of information. However, there has been no progress made in assessing and collating it.

Mr. DUFFETT: No. This process is underway at the present time.

Mr. NUGENT: The act gave the department, I believe, the right to make regulations in respect of the form in which the information should be given. Has the work gone far enough to ascertain whether or not the information required under the Income Tax Act is quite satisfactory for the purpose for which this survey was to be taken? In other words, is there any information in respect of any inefficiency in the information supplied under the Income Tax Act?

Mr. DUFFETT: Yes, we believe this to be the case because many firms already have supplied us with duplicates of the forms they now supply to the Department of National Revenue, so we know precisely, in most cases at least, what we shall be obtaining.

Mr. NUGENT: That is, in filing information under the Income Tax Act; but, I thought when this act was originally passed the purposes were not identical. There was the thought that the information would not necessarily be identical. But, for the specific purpose of this act I thought additional or different information would be required. Has the work progressed long enough to ascertain whether or not additional information would be required?

Mr. DUFFETT: Beyond that required by the Corporations and Labour Unions Returns Act?

Mr. NUGENT: No, beyond that required by the Income Tax Act.

Mr. DUFFETT: Well, the Income Tax Act requires a financial statement. The Corporations and Labour Unions Returns Act requires a financial statement. These are similar. In addition, the Corporations and Labour Unions Returns Act requires information on payments to non-residents by corporations. This information is not reported under the Income Tax Act and will continue to be reported under the Corporations and Labour Unions Returns Act.

Mr. LAMBERT: By an amendment to the Income Tax Act returns now.

Mr. DUFFETT: No. This will continue to be a return under the Corporations and Labour Unions Returns Act. It is supplementary information.

Mr. LAMBERT: Which will be made direct to you?

Mr. DUFFETT: It will be submitted, in all possibility, at the same time as firms submit their income tax statement, so it will come to us through the collection machinery of the Department of National Revenue.

Mr. LAMBERT: You say in all probability. Has no decision been reached in this regard to date?

Mr. DUFFETT: I think it is almost certain. Am I not correct in this, Mr. Traquair?

Mr. D. A. TRAQUAIR (*Administrator, Corporations and Labour Unions Returns Act*): This is a permissive section; that is, the act does not say the firm has to do it this way. The act permits the firm to do it this way.

Mr. DUFFETT: If the firm wishes to submit this additional information on payments to non-residents directly to us, that is acceptable.

Mr. LAMBERT: Well, how do you marry it to their income tax return? Do you do this by going into the Department of National Revenue's files?

Mr. DUFFETT: It is not necessary to link these two immediately. This information on payments to non-residents stands by itself.

Mr. NUGENT: I am still trying to figure out the reasoning on this. I thought when this legislation was first passed that they would be setting up, after they had a look at it, special regulations in respect of exactly the type of information or the form in which companies could submit information that would be most useful to the department, especially with regard to this question of foreign control and balance of payments.

From their work so far, can one of the witnesses tell us what reasoning led them to abandon this idea and to expect the income tax return was sufficient.

Mr. DUFFETT: To answer the first part of your question, the Corporations and Labour Unions Returns Act specifies that the financial statement shall be in a form and contain such particulars and other information as may be prescribed by regulations. This is as far as our powers go in specifying the information to be submitted under the act. The balance of the information, payments of one kind or another to non-residents, rent, royalties, copyrights and so on, is specified in the original act and may not be changed by regulation. In respect of the financial statements supplied to us, it is specified in the regulations that firms may supply to the dominion statistician the same financial statements as they submit to the income tax department, and we have found this to be satisfactory.

Mr. NUGENT: That is the thing; you say you found this satisfactory while you had the power to make regulations, and that power was given because it was thought the income tax returns might not be satisfactory. We have not had the first report to date. This work has not been collated or analysed. But, the decision was made. Have you had enough experience to say these things when you have not even analysed it? Is it not early to say that is satisfactory, or has the original purpose been abandoned?

Mr. DUFFETT: No. Financial statements have been carefully looked at. This power to specify by regulations the form of financial statements was needed primarily in the case of trade unions and, particularly, in the case of the international unions. The international unions have only one financial statement, and that is the one covering the whole of their North American operations, which creates obvious difficulties because, naturally, we are interested in obtaining as broad information as possible on the operations of the unions in Canada, and the regulations have attempted to specify the sort of information that trade unions should supply.

There is a further consideration so far as trade unions are concerned, and that is since they do not make returns to the Department of National Revenue for income tax purposes there is no particular standardization in the form in which the trade unions financial returns could be made. So, it becomes particularly necessary to have the right to specify the form in which they should be made. But, in the case of corporations, the requirements of the Department of National Revenue are pretty well understood and fairly specific, and the returns provided to the Department of National Revenue, so far as we can tell by examining the forms, are quite adequate for the purpose of the act.

Mr. NUGENT: Well, in respect of these returns, the general information supplied to the Department of National Revenue in a summary form always have been available for statistical purposes in any event with regard to balance of payments.

Mr. DUFFETT: No. I am sorry; in total, that is right. This has been so in the aggregate form. What has happened is that the Department of National Revenue has compiled a book known as "Taxation Statistics" summarizing the information, which has been available to the public.

Mr. NUGENT: So, that summary in aggregate form was available long before we passed the act? I am faced with the difficulty of sorting out in my mind why we now are changing our minds and deciding that that information, in effect, is still fine, and it is not necessary to make special regulations to have specific information or the information submitted in the special form. Somewhere along the line this idea was dropped.

Mr. DUFFETT: The report published by the Department of National Revenue is for corporations, only in very broad groups. It may be necessary for us to reclassify these. In many cases it will be necessary for us to examine the individual financial statement together with what our corporations tell us about these payments to non-residents. It may be necessary, as I say, to look at our corporations separately, in order to arrive at an understanding of the way in which the corporation operates.

Mr. NUGENT: What I am trying to get at right now is this. You are giving up the power to make regulations asking for this information in a specific form for your specific purpose and this is before you have had adequate time to examine the information already collected. Is this not being a bit premature?

Mr. DUFFETT: I think probably not. As I see it, the most important part of this legislation, so far as corporations are concerned, is the latter part, which deals with payments to non-residents. These are those things which are of a particular interest to persons being concerned with the relations between Canadian companies and their parents. The financial statements, so far as we can tell, are standard financial statements containing the sort of things one would expect to find in any financial statement.

Mr. LAMBERT: However, you have agreed between you that this, in effect, is an extension of what was being required for your purposes from a limited number of corporations to all corporations in that now you will have access to corporate returns by all corporations?

Mr. DUFFETT: This is correct.

Mr. LAMBERT: Could you also tell us why this additional power which is given to the dominion statistician is taken through the Corporations and Labour Unions Returns Act.

Mr. DUFFETT: I suppose it could be done otherwise, but the reason that it is done under the Corporations and Labour Unions Returns Act is that there was duplication under this act, and we wished to make it clear that the availability of corporation returns from the Department of National Revenue satisfies the reporting requirements of the Corporations and Labour Unions Returns Act. The reason it is useful to have access to all corporations returns, in the first place, is that it would be difficult administratively to specify that we should have access to certain returns but not to others. Corporations grow year by year and it is our expectation that something in the order of 1,500 corporations a year, by reason of growth, will become eligible under the Corporations and Labour Unions Returns Act. If there was a segregation in any way of the returns in national revenue it would be necessary to take the necessary steps to include them under the access arrangements. The major reason for access to all returns is that it is intended, in addition, that we could take over from the Department of National Revenue the publication of the so-called green book. This report covers all large corporations and a substantial sampling of small corporations. So, in order to compile these statistics, it is necessary to have access to the forms of small corporations.

Mr. LAMBERT: I understand that, but I think it is a bootlegging way of doing it. I think you are working through the wrong act; there should have been an amendment to the dominion statistician's act or some other appropriate act, but not this act. What you are accomplishing or trying to accomplish is being done indirectly.

Mr. DUFFETT: In so far as the first objective is concerned, that is avoiding duplicate reporting, under the Corporations and Labour Unions Returns Act it would have been necessary to have an amendment to the Corporations and Labour Unions Returns Act.

Mr. LAMBERT: Why not in the regulations by merely saying that if the corporations wish it would be satisfactory to file a copy of their financial statements which they file under the Income Tax Act?

Mr. DUFFETT: They are already permitted to do this. They are permitted to file a copy of their financial statement. But, it has been suggested to us by many firms this is an unnecessary duplication and they prefer us to deal directly with the Department of National Revenue.

Mr. LAMBERT: I am sorry, I just do not buy it.

The CHAIRMAN: Shall clause 1 carry?

Clause agreed to.

Mr. LAMBERT: On division, Mr. Chairman.

Clause 2 agreed to.

On clause 3.

The CHAIRMAN: Shall clause 3 carry?

Mr. NOWLAN: Mr. Chairman, you will remember in connection with clause 3 I raised an objection to a repeal of those two subsections. It was discussed at some length. The minister said it was a matter of government policy which had been arrived at after careful consideration and that the various people with whom you have communicated have been advised and have seen the bill. I therefore think it is a mistake to repeal that section, but I believe that at the end of the year the whole matter should be reviewed.

The CHAIRMAN: My recollection confirms your remarks, Mr. Nowlan.

Mr. NUGENT: The minister said, I believe, that the report would be forthcoming and that they would take a look at it when they have seen the report. That is one of the reasons I would voice an objection and say that some of this is premature, that it is easier to see the first report at least before you start considering whether a first review is necessary.

The CHAIRMAN: As I recall, the minister said when he tabled the report, that we could come back to it at that time.

Mr. NOWLAN: That is right.

Mr. GELBER: May I ask Mr. Duffett a question? I understand that these changes are in no way going to limit the amount of information. You will still have the same amount of information as you have at the present time for these purposes. Is that correct? What I mean is we do not have to await an evaluation of the information we receive but we are merely changing the procedure of collecting that information.

Mr. DUFFETT: Correct. We will be receiving the same information because in the regulations it is specified that corporations may now, if they wish, submit to us copies of the financial statements which they submit to the Department of National Revenue.

Mr. GELBER: There is no particular reason why we should wait for an evaluation of the first report because we are simply changing our procedure and not the information that we are going to have. Would you agree with that?

Mr. DUFFETT: That is the way I see it.

Mr. GELBER: Actually your department is now going to be obliged to examine many more returns than it does at the present time, so your burden is going to be increased.

Mr. DUFFETT: We will have to examine more returns in connection with the preparation of the corporation portion of the report on taxation statistics.

Mr. GELBER: But you are going to examine all corporation returns?

Mr. DUFFETT: Not necessarily. We will examine returns of all large corporations because this is required under the Corporations and Labour Unions Returns Act, and in part in preparation of the green book. We will examine a sample of the returns of the small firms in order to include them in the report on the taxation statistics. There will be some increase in work.

Mr. GELBER: Do you think your department will examine the returns of the corporations as soon as they are submitted?

Mr. DUFFETT: The procedure was outlined I think at the last meeting here. It is that there are two copies of taxation returns: One remains in the regional office for assessment, the other copy is sent to Ottawa. It will pass through the bureau of statistics and we will take from this return the information which we need and then file it with the Department of National Revenue. We will therefore see it fairly promptly.

Mr. GELBER: So your information really will be examined much more quickly than if you were to depend on the Department of National Revenue to produce the information for you through their assessors?

Mr. DUFFETT: Through the green book, that is what you have in mind, is it?

Mr. GELBER: If you are examining individual reports what will happen is that you will now have two sets of officials, two different departments, examining the corporations' income tax returns. I presume the reason your department is doing it is in order to get the information sooner.

Mr. DUFFETT: Yes, this is not very different from what happens now. There are now two financial statements submitted to the Department of National Revenue, one of which is used by the assessors, while the other comes to Ottawa for preparation of the report on taxation statistics. We will see the latter in very much the same way as the clerks in the Department of National Revenue see it now.

Mr. GELBER: You would not depend on them to produce the information you want, would you?

Mr. DUFFETT: It would not be very practical for us to use the report on taxation statistics for our purposes because it takes a year and a half to two years for this report to come out.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would it be correct, Mr. Duffett, to say that you will be passing on to the Department of National Revenue the report from the corporation after you have extracted from it what information you require?

Mr. DUFFETT: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Will the corporation which has filed this with you be covered with regard to the legal requirements of making a return to the Department of National Revenue within a specified time?

Mr. DUFFETT: The report comes first to the Department of National Revenue and then to us.

Clause agreed to.

The CHAIRMAN: Shall clauses 4 to 6, inclusive, carry?

Clauses 4 to 6, inclusive, agreed to.

The CHAIRMAN: Shall the title carry?

Title agreed to.

The CHAIRMAN: Shall the bill carry?

Bill agreed to.

The CHAIRMAN: Shall I report the bill without amendment?
Agreed.

The CHAIRMAN: Gentlemen, that concludes the business immediately available before this committee. If it meets with your wishes I would propose to call the steering committee together very quickly so that we might arrange the witnesses for Bill No. C-123, the one relating to the insurance, loans and trust companies. I anticipate that there will be a number of people who desire to make recommendations. I have already received one communication from the Canadian Life Insurance Officers Association advising me as follows:

In furtherance of Mr. Kent's conversation with you yesterday I wish to say that representatives of the association would like to be present when your committee is discussing Bill C-123 to amend, among other statutes, the federal insurance acts.

You mentioned to Mr. Kent that a possible date for your hearings on the bill would be Tuesday, October 27. It would suit us to have representatives present on that day.

As there was a possibility that we might be meeting on October 22 I said that subject to direction of the committee we would do so. I merely point out that I anticipated there would be a number of groups and individuals who would like to make representations. It is my intention to call a steering committee meeting very quickly to draft a list of the witnesses and to get the hearings underway expeditiously.

Mr. NOWLAN: If I am on that steering committee, and I think I am, I hope you will meet before Thursday afternoon because I will be away for three or four days.

The CHAIRMAN: I had at the back of my mind a meeting on Thursday morning.

The meeting is adjourned.

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-B11

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

CANADA.

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

(THURSDAY, OCTOBER 29, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESS:

(Mr. Richard Humphrys, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison	Flemming (Victoria- Carleton)	McLean (Charlotte)
Aiken	Gelber	Monteith
Armstrong	Grafftey	More
Asselin (Notre-Dame-de Grâce)	Gray	Moreau
Basford	Grégoire	Munro
Bell	Greene	Nowlan
Berger	Hales	Nugent
Blouin	Jewett (Miss)	Otto
Cameron (High Park)	Jones (Mrs.)	Pascoe
Cameron (Nanaimo- Cowichan-The Islands)	Kindt	Rynard
Caouette	Klein	Scott
Chrétien	*Lambert	Tardif
Côté (Chicoutimi)	Lloyd	Thomas
Douglas	Macaluso	Vincent
Frenette	Mackasey	Wahn
	McCutcheon	Whelan
		Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Ryan on October 22.

ORDERS OF REFERENCE

THURSDAY, October 15, 1964.

Ordered,—That Bill C-123, An Act to amend certain Acts administered in the Department of Insurance be referred to the Standing Committee on Banking and Commerce.

THURSDAY, October 22, 1964.

Ordered,—That the name of Mr. Chrétien be substituted for that of Mr. Ryan on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, October 29, 1964.

(9)

The Standing Committee on Banking and Commerce met at 10.15 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Basford, Bell, Cameron (Nanaimo-Cowichan-The Islands), Chrétien, Gendron, Greene, Kindt, Lambert, Macaluso, Mackasey, McCutcheon, Moreau, Otto, Pennell, Scott and Thomas (18).

In attendance: Mr. R. Humphrys, Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman presented the Second Report of the Sub-Committee on Agenda and Procedure, which recommended as follows:

- (a) That the Committee meet on Thursdays at 10.00 a.m. and on Fridays at 9.30 a.m. until consideration of Bill C-123 is completed;
- (b) That the Committee invite the Superintendent of Insurance to attend on Thursday, October 29th, and Friday, October 30th, to explain the purpose of the Bill and to answer questions; (*Note: the meeting called for October 30th was later postponed to November 3rd*);
- (c) That the All Canada Insurance Federation and the Canadian Life Insurance Officers Association, who have indicated that they wish to make representations on Bill C-123, be invited to attend on Thursday, November 5th, and Friday, November 6th, respectively;
- (d) That witnesses be asked to provide 75 copies of their briefs preferably in advance of the meeting to permit study by the members;
- (e) That witnesses be advised that they should be prepared to summarize their briefs at the meeting, rather than read the entire brief;
- (f) That witnesses who do not submit a written brief should be asked to advise the Chairman or the Clerk in advance of the meeting of the general areas which they expect to cover in their presentation;
- (g) That, as a general practice, the Committee will not sit while the House is sitting, except to accommodate out-of-town witnesses.

On motion of Mr. Moreau, seconded by Mr. Bell, the report was approved.

The Committee proceeded to consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman called Clause 1 and introduced the witnesses.

It was agreed to consider the Bill clause by clause, allowing each clause to stand, in order to permit Mr. Humphrys to explain the purpose of each clause and to be questioned.

Mr. Moreau gave notice of a number of amendments, prepared in the Department of Insurance, which he proposed to move at a later date. (See Notices of Motion of Proposed Amendments appended to these Minutes of Proceedings.)

Mr. Humphrys explained the purpose of Clause 1, was questioned and the Clause was allowed to stand.

Mr. Humphrys made a brief statement on Clause 2, explained the purpose of the proposed amendment to this Clause and was questioned. The Clause was permitted to stand.

The witness explained Clause 3 and the proposed amendment thereto, and was questioned.

At the request of Mr. Basford, the witness agreed to provide a list of companies which are subject to this Act, as well as a list of companies not coming under the provisions of this Act, such lists to be appended to these Proceedings. (*See Appendix A to today's Evidence*)

Clause 3 was allowed to stand.

The Chairman read into the record letters received from the Canadian Life Insurance Officers Association and the All Canada Insurance Federation in reply to letters from the Clerk of the Committee, inviting them to appear before the Committee.

The Committee agreed that copies of the proposed amendments should be sent to the above-mentioned and other organizations who had expressed the wish to make representations on this Bill.

At 12.30 p.m., the Committee adjourned until 10.00 a.m., Tuesday, November 3, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

APPENDIX TO MINUTES OF PROCEEDINGS
OF THE STANDING COMMITTEE ON BANKING
AND COMMERCE, OCTOBER 29, 1964.

NOTICES OF MOTION

OF

PROPOSED AMENDMENTS TO

BILL C-123, AN ACT TO AMEND CERTAIN ACTS ADMINISTERED
IN THE DEPARTMENT OF INSURANCE.

(Notice given by Mr. Moreau, October 29, 1964.)

That sub-clause 2 of clause 2 be amended by striking out line 9 on page 2 and by substituting therefor the following:

"and has, *subject to section 45*, one vote for each share held by him subject"

That clause 3 be amended

- (a) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

"long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

Change of
status of
corporate
resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident."

Stock splits.

- (b) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and
- (c) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to

Conclusions
reached by
directors.

the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

That clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

Change in
capital
stock.

"45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple *thereof but not exceeding* one hundred dollars each.

Voting
rights
qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

That sub-clause 1 of clause 19 be amended by striking out lines 35 to 37 on page 24 and by substituting therefor the following:

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor: 1960-61, c. 16, s. 4 (2)

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, *except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine.*" Segregation of assets.

20 (1) Paragraph (b) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

That sub clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

That clauses 20 to 39 be re-numbered as clauses 21 to 40 respectively.

That clause 29 be amended

(a) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following:

"be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by Change of status of corporate resident.

it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

- (b) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and
- (c) by striking out line 28 of page 38 and by substituting therefor the following:

“section (7) of this section.

Conclusions
reached by
directors.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

That clause 37 be amended

- (a) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

“the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day.

Change of
status of
corporate
resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

- (b) by renumbering subsections (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and

- (c) by striking out line 27 on page 50 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of section 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Conclusions reached by directors.

That the following new clause 41 be inserted and the present clauses 40 and 41 renumbered as clauses 42 and 43 respectively:

"41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

"61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies.

Investment in trust company.

(2) No investment shall be made by a loan company under subsection (1), if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve."

Limitation.

EVIDENCE

THURSDAY, October 29, 1964.

The CHAIRMAN: Gentlemen of the committee, I see a quorum. I call the meeting to order.

The purpose of the meeting today is to consider Bill No. C-123.

With your permission I would advise you that your subcommittee on agenda and procedure met on Thursday, October 22, and agreed to recommend as follows:

- (a) That the committee meet on Thursdays at 10 a.m. and on Fridays at 9.30 a.m. until consideration of Bill C-123 is completed;
- (b) That the committee invite the superintendent of insurance to attend on Thursday, October 29 and Friday, October 30, to explain the purpose of the bill and to answer technical questions;
- (c) That the All Canada Insurance Federation and the Canadian Life Insurance Officers Association, who have indicated that they wish to make representations on Bill No. C-123, be invited to attend on Thursday, November 5 and Friday, November 6 respectively; and that the Dominion Investment Association, who have also indicated that they wish to make representations, be invited to attend;
- (d) That witnesses be asked to provide 75 copies of their briefs, preferably in advance of the meeting to permit study by the members;
- (e) That witnesses be advised that they should be prepared to summarize their briefs at the meeting, rather than read the entire brief to the committee;
- (f) That witnesses who do not submit a written brief should be asked to advise the chairman or the clerk in advance of the meeting of the general areas which they expect to cover in their presentation;
- (g) That, as a general practice, the committee will not sit while the house is sitting, except to accommodate out of town witnesses in emergency.

Mr. MOREAU: I so move.

Mr. BELL: I second the motion that the steering committee's report be adopted.

Mr. BASFORD: I have one caveat to that report.

I think some of us have a caucus tomorrow morning.

The CHAIRMAN: Probably a word of explanation is in order. It is hoped that we may complete the clause-by-clause explanation of the bill today, and in that event the committee would not sit tomorrow. This, of course, is still at the option of the committee. Perhaps we could hold that decision until the close of today's meeting. The Chair will entertain a motion to adjourn at any suitable hour; and your caveat is noted, Mr. Basford.

I will now call for the adoption of the motion. All in favour of the motion please indicate.

Motion agreed to.

The CHAIRMAN: Gentlemen, we have with us today Mr. Humphrys, who is the deputy minister and who is properly entitled superintendent of insurance. He has with him two officials of the department, Mr. Fox on his immediate

right, the executive officer of the department, and Mr. Urquhart, the administrative officer.

It has been suggested that Mr. Humphrys should go through the bill clause by clause, setting out the meaning of each section in plain English so that when the witnesses appear next week we will all be conversant with the bill and equipped to examine the witnesses.

I propose now to call each clause. I will then ask if clause 1 carries, and then clause 2. When each clause has been explained and there are no further questions I will assume that the clause will stand. We will go through the bill clause by clause, standing each one in turn. My procedure is to call each clause and then stand it.

Mr. LAMBERT: I would suggest that for this procedure in which we will be receiving explanations the clauses would not be called in any way nor would they be carried. I think that can only be done when we come to the end and have heard the representations which are to be made.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do they not have to be called?

Mr. LAMBERT: They will only be called in order to facilitate the discussion.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The chairman said they would be stood.

The CHAIRMAN: Yes, I will stand them afterwards. However, I think Mr. Lambert's suggestion is one of common sense and I am prepared to proceed along the lines he suggests.

Mr. MOREAU: I suggest the clauses be called in any event because that will tend to limit the discussion to a particular clause; and then, as I understand it, you will stand the clause.

The CHAIRMAN: The Chair is in the hands of the committee here. I do not want to take too much time on this point; it is just a matter of accommodating the committee so we can get on with the business of the meeting.

Let me just say that I will call the clauses but not in a formal way.

Mr. OTTO: You are the chairman; go ahead.

Mr. MOREAU: If it is in order, I would like to give notice of some amendments.

The reason for which I would like to do this at this time is that the members of the committee will recall the Minister of Finance saying that he would be prepared to accept any suggestions from members or from people in industries concerned. There have been a number of suggestions made to the department or to the minister which are embodied in some amendments for which I would like to give notice of motion. The purpose of producing them at this time would be to give members of the committee a chance to see them, to give our witness a chance to explain them, and to give advance copies of them to the witnesses we are going to receive in the future.

I do not know whether or not this is in order, but I think the proceedings of the committee would be facilitated if this course were followed.

Mr. SCOTT: Would we not deal with these amendments as we came to the clauses concerned?

The CHAIRMAN: Mr. Moreau indicated to me earlier that he proposed to give notice of these amendments and that he would table them immediately so that every member of the committee would have the amendments in front of him. The superintendent is conversant with these proposed amendments, and as we go to each clause he can explain the impact of the proposed amendments.

Mr. OTTO: Mr. Chairman, is Mr. Moreau putting in his amendments on behalf of the Minister of Finance?

The CHAIRMAN: He has given notice of motion that he proposes to put forward the amendments.

Mr. MOREAU: I understand these amendments have been prepared by the Department of Finance for the consideration of the committee. I am taking the responsibility of moving them in the committee.

The CHAIRMAN: They are prepared, I understand, Mr. Moreau.

Mr. MOREAU: Yes.

The CHAIRMAN: Will you distribute them to the members of the committee so that we may have them before us as we go through the bill.

You are now giving notice of motion that you propose to put forward these amendments?

Mr. MOREAU: I can list the clauses.

The CHAIRMAN: The notice of motion, I understand from Mr. Moreau, is being prepared in the French language. Copies are not available at this moment but they will be available very shortly.

I now invite your attention to the remarks of Mr. Humphrys whom I shall ask to commence with clause 1.

On Clause 1—*Provisions applicable to all companies.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): I would like to say in my introductory remarks that the purpose of this bill is to effect amendments in some of the investment powers in the insurance companies, trust companies, and loan companies; to enact a measure that will permit the retention in Canada of ownership and control of life insurance companies, trust companies and loan companies incorporated by parliament that are not now under foreign control; and also to effect a number of other administrative amendments which I will explain as we come to them.

This bill, as you know, deals with four different acts. As a consequence, there is a good deal of repetition in it. In particular, some of the investment changes are repeated several times, so the actual content of the bill is not quite so formidable as it appears from its bulk.

Part I of the bill deals with the Canadian and British Insurance Companies Act. It has amendments affecting Canadian companies and also amendments affecting the assets that may be vested in trust in Canada by British companies for the protection of Canadian policy holders.

Part II deals with the Foreign Insurance Companies Act and enacts amendments parallel in every way to those for British companies.

Part III deals with the Trust Companies Act; and Part IV deals with the Loan Companies Act.

Clause 1 is an application clause, and the changes there are to make sure that the proposed new sections dealing with limitations on non-resident ownership and control apply to all companies, regardless of when incorporated.

Certain provisions of the bill now apply only to companies incorporated since 1910, but clause 1 will make sure that these provisions, and also the provision dealing with the grant of a French or English version of a company's name, apply to all companies.

The CHAIRMAN: Are there any questions on clause 1?

Mr. OTTO: You are inviting questions on the interpretation?

The CHAIRMAN: Yes, so the purport of the bill is clearly in everyone's mind.

As there appear to be no questions on this, may we pass to clause 2, Mr. Humphrys.

Clause 1 stands.

On Clause 2—*Qualifications of directors.*

Mr. HUMPHRYS: Clause 2 changes the required qualifications to act as a shareholder's director of an insurance company. At present, the requirements are the ownership of shares of stock of a par value of at least \$2,500 or shares on which at least \$500 has been paid as capital. The new proposal will reduce the requirement to shares on which at least \$250 has been paid as capital.

I should make it clear that that measures the amount that has been paid to the company as capital; it does not necessarily measure the cost of the shares because the market price of the shares might be very much higher.

The purpose of this is to reduce the required qualification for directors because in the case of some of our life insurance companies shares having an amount of \$250 paid might mean 25 shares at \$10 par value and in some cases the shares are selling at \$300, \$400 and even \$700 a share. So the present requirement of fifty \$10 shares would require an investment of perhaps \$30,000 or \$40,000 to qualify as a director, which is unreasonably high. By cutting this to \$250 paid, the requirement will be from a minimum of a few hundred dollars to a maximum of \$17,000 or \$18,000 depending upon the market value of the shares in question.

Mr. LAMBERT: Mr. Chairman, in this connection and in view of the other requirements of the act, what evidence will be required by the superintendent of insurance or other persons that the shares are being held by the person designated absolutely in his own right and that there is not in existence some sort of trust agreement?

Mr. HUMPHRYS: The requirement in law is that the shares be held absolutely in his own right if he is to qualify, so it is up to the company to determine that anyone proposed for the board fits this qualification. We have examiners in the department who look into it from time to time, and if we have any reason to think that the shares are not absolutely in the shareholder's right, we question it; and if necessary we will obtain a declaration or an affidavit from him. This has not given rise to any difficulty whatsoever.

Mr. LAMBERT: I noticed it existed in the previous one.

Mr. HUMPHRYS: Yes.

Mr. LAMBERT: But then there were no disabilities, were there—

Mr. HUMPHRYS: No.

Mr. LAMBERT: —in so far as the ownership of shares or, shall we say, the residential qualifications of any director were concerned?

Mr. HUMPHRYS: Yes, there is presently a requirement that the majority of the directors shall be residents and citizens of Canada, and this is looked into now.

Mr. LAMBERT: There is no provision for a statutory declaration? Unless you as superintendent of insurance exercise a discretion to call for a statutory declaration there is nothing that puts a shareholder on his mettle to prove that he is not holding some trust declaration on behalf of someone else behind his formal ownership?

Mr. HUMPHRYS: There is no penalty in the law, and no requirement that everyone proposed as a director shall submit a declaration. However, the eligibility requirement is in the law and I think that any corporation would be even more concerned than the department to make sure that every director is properly qualified, because if they had someone on the board who was not properly qualified any action that the board took would be called into question. Therefore, I think every company is very keen to make sure on its own that its directors are qualified under the law. The point has not given rise to any difficulty.

Mr. LAMBERT: Hitherto it has not given rise to any difficulty?

Mr. HUMPHRYS: No.

Mr. LAMBERT: But, with the new implications, do you feel satisfied that this requirement is sufficient without calling for a formal statutory declaration either within the regulations or within the act?

Mr. HUMPHRYS: Very definitely.

Mr. LAMBERT: You are satisfied?

Mr. HUMPHRYS: Yes. I do not believe that the new provisions relating to the ownership of shares would change this problem at all.

Mr. LAMBERT: I see.

Mr. KINDT: Is there a time requirement in order to register as one eligible for being a director?

Mr. HUMPHRYS: Not under the statute.

Mr. KINDT: Can one go out and gather up half a dozen people whom one wants as directors and let them buy \$250 worth of shares and then become directors or become eligible.

Mr. HUMPHRYS: They have to be elected at the meeting, of course, but there is no time limitation.

Mr. KINDT: There is none in this new bill?

Mr. HUMPHRYS: No.

The CHAIRMAN: Are there any further questions on clause 2?

Mr. MOREAU: One of the amendments proposed is in regard to clause 2.

Mr. HUMPHRYS: Clause 2 is in two parts. I have dealt with subclause (1). Subclause (2) is on the next page. This is one of the cases in which an amendment is proposed.

Subclause (2) as presently in the bill amends a section of the act that deals with the voting rights of shareholders. The present law states that each shareholder who has paid in cash all calls on his shares is entitled to attend and vote at all general meetings and to have one vote per share.

In the proposed provisions dealing with non-resident ownership, there are some cases where a shareholder will not be entitled to vote, so these underlined words are inserted to call attention to subsequent sections where this right will be modified.

The amendment to which Mr. Moreau has referred will add the words "subject to section 45" in line nine because that section will modify the rule of one vote per share. Therefore, this subclause is really calling attention to subsequent places in the act where the rules otherwise applicable are modified.

Mr. SCOTT: Mr. Chairman, before we leave the first subsection may I say that it strikes me there is some merit to the suggestion that the directors be required to make a declaration under the Canada Evidence Act that they are the holders in full right of the shares.

Since we may not have the benefit of hearing this witness again, could he give us his comments on the reasons why that should not be done, if any.

Mr. HUMPHRYS: I would say first that I do not think it is necessary because, though this requirement has been in the law for a great many years, in all my experience in the department and from any knowledge that I have gained of experience before my time, this has never given rise to any difficulty. As I said at the outset, the companies are even more concerned than we because if this situation developed I believe it might very well call into question the actions of the board. Therefore, in my experience no one who is not properly qualified has tried—and I cannot conceive of anyone trying—to become a shareholders' director.

This change, of course, will reduce the investment required to qualify, so to that extent it would make it easier.

Mr. SCOTT: You undertake no investigation to make sure that they do?

Mr. HUMPHRYS: Not specifically. We have examiners who look into the condition of companies' affairs, and when they do that they look into the question of directors' qualifications to see that they own the required number of shares. We do not require a statutory declaration. It has never been a problem, and I would not wish to take the initiative of putting the additional requirement on the companies when I feel there is no problem to be dealt with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Will there not be an added problem to be dealt with?

Mr. HUMPHRYS: I would not think so, Mr. Cameron, because already the law requires that the majority of the directors be Canadian citizens and residents of Canada. That has been in the law for some years now, and these new requirements dealing with non-resident ownership of shares will still contain room for a substantial proportion of non-resident ownership quite adequate to qualify a non-resident to act as a director if the rest of the shareholders who have voting rights wish to elect him as such.

I think it would not be right to take the view that non-residents should never be directors, because our Canadian life insurance companies do a large volume of business outside Canada and I believe it is reasonable that there should be representatives from other countries on the boards.

Mr. OTTO: On that point, Mr. Humphrys, you said that if any of the directors were not themselves holding the shares in their own right, it would call into question the actions of the board.

Is it not right to say that it not only calls into question the acts of the board but that it makes the actions of the board void? Therefore the company would be very, very careful to see that the meeting was composed of all directors who were fully qualified; and to substantiate your argument, Mr. Humphrys, companies would be very careful to see that each director was properly qualified.

Mr. HUMPHRYS: That is my opinion.

Mr. OTTO: You said only that it called into question, but I say to you that it is quite possible and in fact probable that it makes the meeting void if all the directors are not fully qualified.

Mr. HUMPHRY: I would not on my own undertake to give a legal opinion on that. From the department's point of view if there were some doubt we would take an opinion from the Department of Justice and obtain their advice on it. It is a point of company law.

In any event, I believe it is a situation that any corporation would wish to avoid.

The CHAIRMAN: Are there any further questions on subclause (1)?

Mr. Humphrys, I would invite you to go back to subclause (2) and state very briefly the effect of the amendment if carried.

Mr. HUMPHRYS: The effect of the amendment would call attention to a subsequent place in the bill where the rule that a shareholder has one vote per share will be modified.

Mr. KINDT: Can you in a few words summarize your views, Mr. Humphrys, of what may be accomplished by this restriction on voting rights of foreigners? What are the good effects and what are the bad effects?

Mr. HUMPHRYS: This would be on clause 3.

The CHAIRMAN: The suggestion was made at the beginning, Mr. Kindt, that at this meeting we would just go through each clause and explain the

meaning. Later, the minister will be appearing before the committee, and other witnesses. I suggest your question might more properly be directed to the minister than to one of the officials.

Does that meet with your approval, Mr. Kindt?

Mr. KINDT: Yes.

The CHAIRMAN: Thank you. Clause 2 stands.

On Clause 3—*Definitions*.

Mr. HUMPHRYS: This clause of the bill proposes the enactment of five new sections, and these are the sections that deal with the question of limiting the degree of non-resident ownership and control of life insurance companies incorporated by parliament that are not now under non-resident control.

I think the best way for me to explain the plan and the content of these sections would be to go through them section by section. As we pass through them I will try to explain the plan.

The first of the five sections is numbered 16B, as you will see. This is a definition section. Subsection (1) of the proposed section 16B defines what is to be considered as a non-resident for subsequent purposes in the bill. Essentially, these non-residents are defined as individuals who are not ordinarily resident in Canada, and corporations, including in that term associations, partnerships or other organizations, that are incorporated or formed out of Canada.

The definition also includes Canadian corporations that are under the control of non-residents; it includes trusts established by non-residents or trusts where a majority of those having the beneficial interest are non-residents; and it includes Canadian corporations controlled by a non-resident trust.

Then, for convenience and subsequent reference, a resident is stated to be anyone who is not a non-resident.

Mr. LAMBERT: What are the criteria within the department of insurance for the definition of "ordinarily resident".

Is this the income tax provision that a minimum of ordinary residence of 180 days in Canada shall deem a person to be a resident of Canada?

Mr. HUMPHRYS: There is nothing in the legislation or regulations promulgated by the department that would define this term. From the way in which the plan is proposed, the responsibility for allowing or refusing to allow a transfer of shares rests upon the board of directors of the corporation that has issued the shares, and it would be up to the directors to decide whether the proposed transferee is ordinarily resident in Canada or not. I believe from the way the plan is proposed they could use their discretion in making a judgment; I do not think they would have to be bound by any particular rule.

Even if a man were here for a year or two years, if his posting were temporary, and it was intended, and he knew it was intended, that he would go back to his own country, the ordinary view would be that he is not ordinarily resident in Canada. I think there may be borderline cases, but essentially it is an area where the directors would have discretion to look at the case and make up their minds what they think about it.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Does that not mean that you are leaving in the hands of the board of directors the right to define what is or is not a non-resident?

Mr. HUMPHRYS: Substantially, yes.

Mr. LAMBERT: What if you disagree? Because of the penalties on non-residents, I would have thought for the purposes of the act and for the clarification of all the boards of directors of companies covered by these acts there would be established a yardstick as in the Income Tax Act.

Mr. HUMPHRYS: I think to attempt to define it on an arbitrary formula would weaken the effectiveness of the plan rather than strengthen it.

It is true that directors would have some discretion, but I think in dealing with these matters there will inevitably be cases, not only with regard to this question but also with regard to the question of control, where someone's discretion will have to be used, and the essence of this plan is to give discretion for transfers to the board of directors.

The plan also provides for a limitation of voting rights in certain circumstances, so even if the directors allow the transfer of shares and the transfer is valid, it does not necessarily mean that for voting the transferee has received the status of a resident, for purposes of the act.

The legislation makes it a matter of law whether a person can exercise voting rights or not in certain circumstances, so if a dispute arises it would be a matter for the court to determine whether the person was ordinarily resident in Canada or not.

Mr. LAMBERT: May I respectfully submit that here is an area of uncertainty that I do not think will be beneficial to the plan as envisaged by the legislation.

Mr. HUMPHRYS: I think it should be kept in mind on points such as this that these provisions are not of the same nature as the provisions of taxing statutes. There is not the same prize, if I may use that word, for finding a loophole as there might be in the case of a taxing statute because what we are essentially dealing with here is a question of control, and there is no real motive or incentive to find room to get a share or two. If it does not involve a large block of shares it is not going to have much effect on the control of the company.

I believe there may be some borderline cases where a question of opinion might be involved, but I do not think cases so involved will be numerous enough to cause a real problem in administering the section.

Mr. MOREAU: What objection would there be to the relatively simple yardstick of Canadian citizenship?

Mr. HUMPHRYS: It would insert additional administrative difficulties because there are a great many people in Canada who have lived here for many years, perhaps most of their lives, and who may not be Canadian citizens.

Mr. MACKASEY: Why would they not be Canadian citizens?

Mr. HUMPHRYS: Perhaps they are British subjects but not Canadian citizens.

In setting this up and putting the responsibility on the directors, the plan attempts to keep the administrative problems within reasonable confines.

Mr. MOREAU: It seems to me that the onus of establishing Canadian citizenship could still be left to the board of directors.

Mr. HUMPHRYS: Yes, but I was trying to clarify my answer by indicating that the plan as proposed lays certain responsibilities or duties on the board of directors, and in so doing it is important to keep the scope of the administrative problems within some reasonable area.

As presently drafted the plan requires the directors to look at the question of residence only when they are considering a transfer. They do not have to go further and inquire into his citizenship; they do not have to inquire into beneficial ownership of the shares; so this simplifies their problem to some extent without, I think, weakening the purposes and effect of the plan.

You could require citizenship. It would mean that for every transfer even for small shares, and where you know the person and it is fairly obvious where he is living, nevertheless you would have to get a declaration from him with regard to citizenship. It adds problems that it was thought could be avoided,

and it was considered it would be sufficient to go only as far as the residence question. I think to put in a citizenship requirement would add further difficulties; it would tighten it up. It is a question of judgment whether the additional tightening up would warrant the additional problems in operation.

Mr. BASFORD: In section (c) (iii) what are your criteria for control?

In answering the question I would ask you to address your mind to the problem of a publicly held company with very widespread shareholders where it is possible for one person or one group of people in fact to control the company while holding a relatively small number of shares if the rest of the shareholders are widely dispersed and separate.

Mr. HUMPHRYS: There is no definition of the term in these proposed sections, and the problem there is not unlike the problem of residence that we were just discussing.

The intention is to leave the question of control to be looked into by the directors, and to judge the case on the circumstances so far as they can learn them.

There are a wide variety of cases, problems and circumstances dealing with this question of control. I think generally one could start from one extreme and say it would nearly always be accepted that where an individual has a majority of the voting shares he controls the corporation. But going from there to the opposite extreme where the shares are very widely spread in small blocks, looking also at the problems that would be thrown up by corporate empires, as you might say, with parents and subsidiaries and voting trusts and a wide variety of circumstances, it seems that the feasible course is to put on the directors the obligation to look at each case and to form their own view, and let them make their decision on that basis in accordance with the circumstances as they find them.

Any effort at writing in a definition by formula would almost inevitably sweep in some cases that perhaps you did not want to sweep in and perhaps leave out others that should be swept in—for example, perhaps a majority of shares of a Canadian company or a majority of the voting interest might be in the hands of non-residents. However, if it was widely spread in small blocks, I do not think it could be properly held that the corporation was under the control of non-residents, because I think the concept or the idea of control implies the power to direct in some continuing fashion the affairs and fortunes of the corporation.

It does not mean merely to a temporary power to dominate a meeting. For example, by gathering together enough proxies to swing a vote, I do not think a holder of the proxies would normally be considered to control the company. He might have the dominant voice at a particular meeting, but I think the concept of "control" carries with it some continuing power.

Mr. BASFORD: Having left it to the board of directors to determine in their own minds the question of control, what happens if you are not satisfied with the opinion they arrive at?

Mr. HUMPHRYS: If they approve a transfer acting in good faith, the transfer of shares is valid. So the opinion or the area of discretion is left with the directors. The safeguard in so far as the public interest is concerned is the provision that if a non-resident owns or controls more than 10 per cent of the shares of one of these companies he cannot vote at all. Therefore, an incentive to find a way through the restrictions that would otherwise apply is removed. If he gets the shares because in the opinion of the directors of the corporation he is a resident, although in fact he is a non-resident, then if he attempts to vote those shares he may leave himself open to a penalty. Furthermore, any action taken at a meeting at which such voting takes place may be voided by the company at a subsequent meeting. There is still the safeguard that if a

person is a non-resident he cannot vote if he has more than 10 per cent of the shares.

Mr. BASFORD: It would seem to me obvious that three different Rockefellers could own 8 per cent of the shares and quite clearly in the context of Canadian business, could control that company.

Mr. HUMPHRYS: The proposal defines certain circumstances in which shareholders will be associated with each other. The definition of "association" is in subsection (2) of 16B and sweeps in the main types of cases where you might expect shareholding to be split up within a corporate structure. It does not attempt to describe every possible association. In the circumstance or illustration that you mentioned in which perhaps three brothers each have 8 per cent of the shares and agree to vote in concert, they might, it is true, have the largest single voice in the meeting. But there is a limitation of 25 per cent on the total shares that can go out to non-residents, so under this limitation they would not be able to get more than 25 per cent if there were three brothers working on it.

The problem thrown up by that particular illustration is not, I think, the kind of problem that gave rise to this plan. The problem that is being dealt with by this plan is the problem of persons seeking to buy, or buying, a complete controlling interest.

The experience we have had on the question of non-residents buying control of existing insurance companies has been that this pressure comes from outside insurance interests and from individuals or groups who are interested in buying control—real control, by which I mean a majority of the voting interest, not merely temporary control which would be on the basis of perhaps a large block of shares but not a dominant block.

While the possibility does exist of persons working in concert who are not deemed by this act to be associated, it is a kind of arrangement that is not likely to result in a majority of the voting interest being held by the persons concerned, or an arrangement that is a continuing one, or one that would lead to permanent alienation of control of a Canadian enterprise.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Did I understand you to say just now that the onus does not rest on the directors to determine the beneficial owners of the shares or to determine whether or not the titular owners are in fact the real owners?

Mr. HUMPHRYS: No.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It rests with you? If you have any suspicion you investigate it? Is that the case?

Mr. HUMPHRYS: The only case in which this question would arise, Mr. Cameron, is where people propose to vote the shares. Then the statute says that if anyone votes the shares in circumstances described in a subsequent section he is leaving himself open to penalty, and the actions taken at the meeting at which he votes are voidable.

If the department knew of a case where votes were being cast that should not be cast we could take the same action that we would take in connection with any other violation of the statute.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): To come back to the case suggested by Mr. Basford where a comparatively small group has effective control of a corporation, would the directors of such a company not be, in effect, the nominees of that small group? And are you not under this legislation asking those people to investigate themselves to find out whether the basis of their control is legal or illegal under the terms of this act? They do not have to find out whether or not the shares that have been voted to put them in as directors are in effect owned by those people or not; you do not put any onus on them for that, and yet you are asking them to police themselves.

Mr. HUMPHRYS: The persons who vote the shares or who act as proxies for persons who are prohibited from voting are themselves liable to penalty. So if anyone casts votes in circumstances in which voting is prohibited, he himself is liable to a fine or a jail sentence, or both. In addition to that, the action taken at the meeting is voidable.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I know, but what grounds have you for supposing that your department will be able to unearth any private arrangements or secret arrangements with regard to the ownership of these shares? When you do not put any onus on the directors to themselves check on this, it seems to me there is quite a large hole in the legislation, a hole for large wagons to be driven through.

Mr. HUMPHRYS: I think the fact that there are fairly serious penalties on anyone who votes when he should not vote is itself a very substantial deterrent to anyone taking this action at a meeting.

The fact that the penalty exists and the fact that the actions taken at the meeting are voidable creates a circumstance in which it is virtually inconceivable that anyone would invest a very large amount of money in attempting to buy a company only to have his control or his power to direct the company rest on such a questionable and unstable basis. There just would be no point in a foreign investor attempting to buy a company in such circumstances.

I know that non-residents often regard shares of Canadian life insurance companies and other companies as good investments—but they are not that good.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): When you leave the power of definition of a resident or a non-resident in the hands of this same board of directors, where are you?

Mr. HUMPHRYS: The definition is not left in their hands as far as voting is concerned.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What yardstick do they use? You say there is no yardstick here.

Mr. HUMPHRYS: They must use their own opinion on the question of transfer, but on the question of voting it is the law that is speaking, and any person who is in this status—

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What definitions are applied there? What yardstick is applied there for resident or non-resident with regard to voting?

Mr. HUMPHRYS: The yardstick as defined here is a person who is ordinarily resident in Canada or a corporation formed outside.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But you have already told us that the directors are the only ones who have the power to interpret that and make the definition.

Mr. HUMPHRYS: I said the obligation on the directors under the plan extends to the question of allowing or refusing to allow the transfer of shares; and in order to make a determination of whether to allow or refuse to allow they must form an opinion on whether the proposed transferee is a non-resident or not. However, the provisions dealing with voting rights state that if a non-resident, together with associates, owns directly or indirectly more than 10 per cent of the shares, no one shall exercise the voting rights on those shares. If anyone does, it is up to him to decide, and he knows whether he is a resident or not. If he votes when he is a non-resident, then he may leave himself open to a penalty.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): How does he know whether he is resident or non-resident?

Mr. HUMPHRYS: As the provisions are drafted, if a dispute were to arise it would have to be left to a court to determine.

Mr. BASFORD: You are talking of someone who, within the statutes, is clearly not entitled to vote, but we are talking about a person who is clearly entitled to vote and where there is some question. I question whether it should come down on this side or on the other side.

I am suggesting to you, for example—and I am mentioning names but not in order to malign anyone—that a Canadian director of the Mercantile Bank who is also a director of an insurance company, if he has any possibility of voting in different ways is not going to vote against the interests of the Chase Bank of New York.

Mr. HUMPHRYS: Of course. Even if you were to legislate that all the directors must be Canadian citizens resident in Canada, you cannot legislate how they are going to vote on any particular issue; I agree with you. The only suspension of voting rights proposed in this plan takes place in the case of a non-resident who owns more than 10 per cent of the shares, so you do not have to worry about the small shareholder because there is no suspension of voting rights for him. If he has the shares he can attend and vote. It is one of the aspects of this plan that, in order to make it work, directors do not have to investigate the status of every shareholder. The suspension of voting rights, the penalties provided for exercising voting rights, and prohibitions against exercising voting rights apply only in cases of relatively large blocks of shares, and it seems highly unlikely that it would be all that difficult to determine the residence status of those few shareholders who own blocks of shares in excess of 10 per cent.

Furthermore, the purchase of 10 per cent of the shares of any of these corporations is not a small investment, and investors are careful of their own investments and are looking to their own interests. There would be no motive or incentive to put a large investment into a corporation in regard to which your status would be in question.

Mr. BASFORD: Do you have a list of the companies operating under this act?

Mr. HUMPHRYS: We have a list of the Canadian life insurance companies that are registered with our department—companies that are subject to this act—and I also have a list of those that would be subject to these provisions by reason of still being under Canadian control.

Mr. BASFORD: I wonder if they could be tabled and appended to today's proceedings?

Mr. HUMPHRYS: I would be glad to do that.

The CHAIRMAN: I am advised there would be no objection to that, Mr. Basford.

Mr. OTTO: Mr. Chairman, with great respect I wonder whether you are going to succeed in having Mr. Humphrys only interpret the meaning of the sections and not the purpose, because it seems we are going all over the place. I must say I am still confused—in fact more confused now—on the term “ordinary resident”. However, I think the minister will be able to define those words more clearly when he comes before us.

Mr. HUMPHRYS: So far as the definition is concerned in the bill as proposed, the situation is as I have described it.

Mr. OTTO: In section 16B(c) (ii) the words “a corporation incorporated, formed or otherwise organized elsewhere than in Canada” are used. Is the meaning of this subsection that it will be considered a non-resident corporation if it was originated elsewhere? For instance, an English insurance company may have been originated and formed before Canada itself, and even if

95 per cent of the shares are owned by Canadians now would that still be considered to be a foreign corporation or non-resident regardless of where the shares are held at the present time?

Mr. HUMPHRYS: That is correct.

Mr. OTTO: And the same thing would apply, for instance, for the Seven Arts Production, which I believe was a New York company. Of course, this was not in the field of insurance. If all the shares were held by Canadians would it still be considered a non-resident corporation?

Mr. HUMPHRYS: Under this definition, yes.

The CHAIRMAN: As we get to the other sections I think you will find the benefit of the method we are using now will become more evident. This definition is a little tedious, I know.

Are there any further questions on clause 3?

Mr. KINDT: I have one other point to make before we leave that.

I gain the impression that the enforcement of the provisions of the act is purposely left to a large extent to the corporations themselves.

Mr. HUMPHRYS: I would say that is correct.

Mr. KINDT: Therefore it has been necessary in writing this to choose such words as "ordinarily resident". In other words, it is like trying to pin an eel with a blunt fork, and that term is just that.

If it were going before the courts at a later time you would not leave "ordinarily resident" in the act as it now stands? It seems to me that this opens the door. You could crawl in and out. Any corporation or board of directors could vary that one way or the other. If you want a fine line determined in court you could not turn back to the organic act and find the purpose of such terms as "ordinarily resident".

I think it is necessary for us to get the point of view of the department and to find out what they have in mind in reference to this act. I think it hinges on the fact that the corporations are supposed largely to look after it themselves.

Mr. HUMPHRYS: That is right, and I would suggest also that if the question is so finely drawn that it is difficult to decide whether an individual is a resident or not a resident, it probably does not matter very much whether he gets the shares or does not get the shares because the question involved would not then relate to control—non-resident control—of the corporation.

In any event, if as I have said he knew that he was in fact a non-resident, then his voting power would rest on a very questionable status. The probability of anyone making a large investment in a corporation on such a dubious foundation is quite small.

Mr. KINDT: It would also be impossible to administer it if you nailed it right down in the form of a definition?

Mr. HUMPHRYS: It would be very difficult to draw a definition that would do what you want to do, because once you get a definition, then you open the way to persons setting themselves about circumventing the rule by merely qualifying under the definition. For example, if you set a definition of one year's residence if there were advantages otherwise accruing, this would almost be an invitation to persons to establish their one year and say, "Now I am home free."

By leaving it without a specific definition but with the intention fairly clearly indicated, you greatly reduce the possibility or probability of anyone attempting to gain control or have the major voice in a corporation by finding some way through or around a technical provision.

The CHAIRMAN: May we then proceed to the next subclause, Mr. Humphrys?

Mr. HUMPHRYS: Subsection (2) of 16B deals with the question of associations, and I think the problems there are much as we have discussed. This defines circumstances in which shareholders are deemed to be associated one with another, and the intention is to permit shares owned by non-residents to be lumped together where it seems likely that the exercising of the voting rights of those shares will be under a common direction.

This definition is necessary in connection with the later provision that suspends voting rights in the case of blocks of shares exceeding 10 per cent that are owned by non-residents and their associates.

Section 16C on page 3 of the bill is the main operative section of the proposal. This is the section that places the obligation on the directors to refuse to allow the transfer of shares that is, the entry of the transfer of shares in the company's books, in the circumstances defined in paragraphs (a), (b), (c) and (d). The legislation in existing provisions states that unless the transfer of a share is registered on the books of a company it is not valid. Therefore the control is placed in the hands of the directors in connection with their power to allow or refuse to allow the entry of a transfer in the books of the company.

The circumstances in which directors are required to refuse to allow the entry of a transfer to a non-resident are four. The first is where there is already 25 per cent of the shares in the hands of non-residents. They cannot permit any further transfers, that would increase the non-resident holding—but this does not prevent them from allowing transfers between one non-resident and another. The second circumstance is where non-residents hold less than 25 per cent of the shares but the transfer under consideration would push that holding over 25 per cent. The third circumstance is where the transferee, together with shareholders associated with him, already owns more than 10 per cent of the shares. This would cause them to refuse to allow the transfer to him of any more shares; and this would apply whether the transfer was from a resident or from another non-resident. The fourth circumstance is where the transferee together with associates owns less than 10 per cent of the shares but the transfer, if approved, would push his holding over 10 per cent.

The plan, then, is to put a limit of 25 per cent on the shares that can be transferred to non-residents, and a limit of 10 per cent on the shares that can be held by any one non-resident together with shareholders associated with him.

The section also provides that an allotment of shares shall be treated in the same fashion as a transfer, and it provides that default in complying with the provisions of the section does not affect the validity of the transfer.

These may seem odd, but as we have noted in the earlier discussion, there may be borderline cases. There may be cases of the transfer of small blocks of shares where, if this provision were not put in, title to the shares might be under question, and you might have a situation in which years later the title to the small block of shares that were transferred in good faith might be drawn into question. Therefore, in order to avoid that very difficult situation it is provided that if a transfer is allowed on the books of the company it is valid. However, the directors who knowingly permit any transfer which should not be permitted are subject to penalty. The word "knowingly" is put in there so that if they act in good faith they are not going to find themselves subject to penalty.

That is the obligation resting on the directors. It is to be noted that in carrying out these obligations they need look at residence only. There may be circumstances where a resident buys shares and has them registered in his own name, but a non-resident is in fact the beneficial owner. If that situation arises, then in the subsequent section, which I will come to in a moment, the

voting rights are suspended. However, if the directors were required to investigate the beneficial ownership of the shares it would put a considerably larger degree of responsibility and administrative difficulty on them. It would raise a great many difficulties in the ordinary market operations where it may happen that one shareholder as nominee holds shares for a number of non-residents, and in fact the beneficial owners may change from time to time without a transfer on the books of the company. Looking at this plan as a whole it is not necessary to require the directors to make this further investigation; consequently the responsibility on them extends only to the question of transfers and only on questions of residence, not the beneficial ownership.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there any obligation on the part of the companies to report to your department the proportion of non-resident ownership at any particular time?

Mr. HUMPHRYS: The companies reporting to us always supply us with the list of shareholders showing the name and residence of the shareholders. In the present circumstance the directors do not have the power to call for complete disclosure of residence or beneficial ownership of the shares, but in a subsequent section in this plan they are given power to enact bylaws that would enable them to investigate in great detail the status of the shareholders lists, and we will get that information.

Mr. OTTO: In section 1 of 16C we see the words "directors of a life insurance company shall refuse to allow in the book or books referred to in section 15..."

I do not know what section 15 says but I want to put my point in this way. If the board of directors authorized at a meeting of the board of directors the transfer of a large block of shares to John Jones or Mr. Rockefeller, as Mr. Basford has said, and instructed the secretary of the company at such time or times which are not specified to make those transfers in the share registry book, this may go on—as it does go on in some companies—for years without having the actual transfer made effective in the transfer book because there is no time limit. In the meantime there is a vote. The present shareholder according to the share registry book votes by proxy or at the instructions of the purchaser. Does this definition of book or books also include the minute book of the company or only the share transfer book?

Mr. HUMPHRYS: Only the share transfer book.

Mr. OTTO: There is no provision in any act that I know of that enforces the secretary of the company to make the share transfer in the share transfer book in accord with the minutes of the meeting. So it is quite possible that the board of directors may authorize the sale of shares or the transfer of shares but no entry having been made in the share transfer book the transaction would not come under this provision.

Mr. HUMPHRYS: That is possible, but the law provides that if a transfer is not entered in the book it is not valid for any purpose other than showing the rights of two parties between one another.

Mr. OTTO: You can exercise the same control through rights as you can through shares.

Mr. HUMPHRYS: I think perhaps the next section bears on that problem.

In section 16D (1) it is stated that where a resident holds shares of the capital stock of a life insurance company in the right of or for the use or benefit of the non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

So in the circumstances that you describe, if the shares remain registered in the name of a resident but have in fact been sold to a non-resident, then the resident would be holding those shares for the use or benefit of the non-resident because the purchaser would surely expect the dividends. Therefore in the circumstances no one would be permitted to exercise the voting rights pertaining to those shares.

Mr. BASFORD: I may be anticipating a little, Mr. Humphrys, and if so please tell me.

I understand section 16C does not apply to companies to which on a prescribed day there was a majority of non-resident ownership.

Why do we not have section 16(c), in these provisions at least, relating to the balance of the Canadian ownership in non-resident companies so that the element of non-residency cannot at least be increased?

Mr. HUMPHRYS: One of the principles running through this plan is not to interfere with the existing holdings, not to take away the existing rights that shareholders have. Where a non-resident has purchased a control of a Canadian company, in effect these provisions do not attempt to recapture the shares. What they are attempting to do is to prevent further companies passing under non-resident control.

Mr. BASFORD: May I interrupt? I appreciate and quite frankly I agree with it. If someone now has 75 per cent control of the company, I am not in favour of thumping him over the head so that he gets rid of it, but I am concerned with the balance of the 25 per cent which in the case I am thinking of would be Canadian owned. Under the legislation, that remaining 25 per cent could next month be sold to non-residents.

Mr. HUMPHRYS: That is correct.

Mr. BASFORD: I am concerned with the hardship involved in at least preventing that 25 per cent from becoming non-resident.

Mr. HUMPHRYS: I think perhaps the answer to your question is that the purpose of this plan is to prevent the sale of the control of the companies that are now under Canadian control. This plan, where a company is already under non-Canadian control does not attempt to deal with the preservation of a minimum proportion of Canadian ownership. I do not feel that I am in a position to give an opinion on whether or not that would be a desirable thing to do. This plan does not attempt to deal with that situation. That is as far as I can go. If your question is "Why does it not?", I think perhaps the minister should more properly answer it.

Mr. BASFORD: Do you have a list of companies that would be excluded?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Could they be tabled?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: What is the degree of American control of the companies that are excluded?

Mr. HUMPHRYS: It varies. In most cases it is practically complete, but in some cases it may range from 75 per cent up. There are 13 such companies registered with our department.

Mr. GREENE: There is no practical reason, from the standpoint of administration, why they could not be included with respect to minority holdings. It is purely a question of policy. Is that correct?

Mr. HUMPHRYS: I would not think that the administrative problems would be any more difficult than are now being faced under this plan. I should add also that the law already requires that a majority of the directors be Canadian citizens resident in Canada, whether the majority of the voting interests is in the hands of a non-resident or not.

The CHAIRMAN: Can we move on to section 16D?

Mr. HUMPHRYS: Section 16D(2) deals with the question of voting rights. I have already touched on subsection (1). It provides that where a resident holds shares for the use or benefit of the non-resident, the resident, that is the shareholder, shall not either in person or by proxy, exercise the voting

rights. I noted earlier that the directors, in considering transfers, need only to look at the residence of the transferee. If the transferee is buying the shares for the use or benefit of the non-resident, this subsection will remove the voting rights. This removal of voting rights applies regardless of how many shares may be involved in this particular operation.

The second subsection provides that where a non-resident, together with associates, holds directly or indirectly more than 10 per cent of the shares, then no one shall exercise the voting rights. That prohibition applies not only to the shareholder but also to anyone acting as proxy for him. So that if the shareholder does not show up to vote at the annual meeting, there would be no question, but if he does show up to vote, it is incumbent on him to see to it that the prohibition described in section 16D does not apply to him. Otherwise, if he does attend and votes, he is leaving himself open to penalty of a fine or imprisonment or both. The section goes on to provide that if someone votes, notwithstanding this prohibition, then the fact of so voting does not of itself void action taken at the meeting, but any action taken is voidable at a subsequent meeting within one year. This seems essential because otherwise the holder of a small number of shares might, through ignorance or misunderstanding, vote, and one would not want the proceedings at the annual meeting to be called into question because of an action that could have no possible effect on the outcome. However, the person concerned would nevertheless leave himself open to penalty.

Mr. AIKEN: Might I ask a question at this point? This is a purely personal obligation on the part of the holders, and there is no other means of supervision of it. Is that right?

Mr. HUMPHRYS: It falls in the same category as any other violation of the statute. The penalties are applicable on a summary conviction.

Mr. BASFORD: I am a little concerned about subsection (4) which I have not had sufficient time to think out. The proceedings are void and voidable at the option of the company. What Mr. Aiken said was that to comply with that section is a purely personal obligation. I cannot for the life of me imagine circumstances where a man would exercise his option and declare it void, can you?

Mr. HUMPHRYS: The presence of this provision would deter any non-resident from attempting to control the company by disregarding the prohibition otherwise provided. He would know that even if he had attended and voted, even if no one challenged his right to vote or attempted to apply the penalties to him, that anything done at the meeting is voidable by the other shareholders. It is therefore a practical impossibility to control a company in any continuing fashion on a basis such as that. So the presence of this statutory provision would, I believe, act as an effective deterrent to anyone attempting to cast his vote regardless of the prohibition, even if he were prepared to submit to the penalty in order to dominate the meeting. In such a case the rest of the shareholders could reverse the action taken.

Mr. BASFORD: I can appreciate the difficulties you raised. You say that if these provisions are not observed, then the proceedings should not be void because to make them automatically void would create an intolerable situation in companies, I think. However, what thought has been given to making them also voidable at the option of the governor in council or the superintendent of insurance or the Minister of Finance?

Mr. HUMPHRYS: This plan, as has already been noted, is based on the principle of placing the obligation on the directors of the company and on the shareholders concerned. We have already noted that there are areas where it may be necessary to exercise discretion. One can conceive of a plan where that discretion would be placed in the hands of government officials or in the

hands of the governor in council or in the hands of a committee of the cabinet. However, the plan as proposed, leaves the element of discretion with the directors with the thought that it is sufficient as designed to effect the purpose, which is to prevent control of companies now under Canadian control passing into foreign hands. It does not put the government or a government official in the position of supervising the actions at an annual meeting. It rather attempts to say that the decisions at the company meeting shall be taken predominantly by Canadians. If the shareholders of the company, those who have voting rights, are satisfied with the actions taken, then the actions are accepted. One can conceive of a plan, of course, for putting more discretion in the hands of government officials, but this plan attempts to deal with the problem without going any further than seems absolutely necessary in interfering with the company's own operation.

Mr. BASFORD: Do you have the right—and this may be a legal question which you might not want to answer—to apply to a court for an injunction restraining individuals or companies from breaching any of these provisions, an injunction restraining them from entering transfers, or voting, or this sort of thing?

Mr. HUMPHRYS: I cannot answer that. I would have to get legal advice on that. We can take action if the provisions of the statute are violated, but whether we can seek an injunction I do not know.

Mr. BASFORD: You can take action by way of a summary conviction after the event, but I want to know whether you can take action before the event?

Mr. HUMPHRYS: I do not know.

Mr. AIKEN: Is that not really covered by the previous section, the essence of preventing transfers under 16C? Is 16D not merely a penalty section to back up the non-transfer rules?

Mr. OTTO: Section 16C applies to directors.

Mr. HUMPHRYS: Notwithstanding the prohibition in 16C as to transfer of shares, there may be some circumstances where non-residents will acquire ownership of shares that do not involve a transfer on the books of the company. For example, a resident could move or an association could be formed among non-residents leading to control of blocks of shares in excess of 10 per cent. To meet these circumstances section 16D is put in, that is to prevent non-residents gaining control of a company through those means.

Mr. GREENE: Does the Department of Insurance presently have some policing or investigatory power over the companies in respect of present rules applicable to life companies?

Mr. HUMPHRYS: Yes.

Mr. GREENE: Is it contemplated by regulation or otherwise that those investigatory powers will be augmented to permit officials of the department to determine whether these new rules are complied with from year to year by the various companies?

Mr. HUMPHRYS: Yes, indeed. In our regular supervision and examination of companies we look into all aspects of the governing statutes to see to it that they are complied with.

Mr. BELL: Do you not envisage a great many references of different deals that may be taking place, such as those that the combines director might now have and on which you will be asked to express yourself, either in a legal way or in a semi-legal way, regarding their desirability? I think you are going to have a great many of the problems that we have under the Combines Investigation Act now. As Mr. Greene suggests, the difficulty is going to be to police it afterwards. You can threaten them with a penalty when they first talk about what they are going to do.

Mr. HUMPHRYS: We do not expect a great number of these problems, Mr. Bell. I think we have spent quite a bit of time this morning in discussing what you might refer to as borderline cases. They are obviously the difficult cases and they must receive attention, but the normal flow of share transfers, I think, will give rise to very few problems of this type. I think that the borderline cases that will be encountered will be relatively few. The presence of this plan and these provisions in the statute will deter non-residents who might otherwise be interested in buying control of a company from doing so. There are many other ways to invest money, and to be faced with a complex pattern such as this would mean, to a non-resident who is seeking a large investment to control a company, that he would turn elsewhere. It would not make sense to me to put a large investment in an area that gives rise to any doubts or difficulties of this type.

Mr. BELL: In other words, the plan is more or less a window dressing or public relations rather than any great idea to police this?

Mr. HUMPHRYS: I would not agree with that as stated. However, I would suggest that the presence of the plan might result in a great reduction in the desire to gain control of companies subject to these rules.

Mr. BASFORD: One year in jail for violating provisions hardly seems window dressing to me.

Mr. BELL: But we already heard from the witness that there is not going to be any use of this as it will not be necessary.

Mr. OTTO: Mr. Humphrys, in your remarks on section 16D(1) did you say that a shareholder may not transfer or give a proxy to a non-resident?

Mr. HUMPHRYS: I did not say that.

Mr. OTTO: I did not quite hear you, because this does not change the present rule. In other words, if I have a substantial number of shares to my own benefit in an insurance company, and I want to give a proxy to a non-resident who happens to be a shareholder because I trust his judgment even though my shares may amount to 50 per cent, there is nothing to prevent me from giving him a proxy to vote for me.

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: I was going to ask whether the result of the evidence on this particular section is that major companies and reputable firms, when they know that this provision is here, are going to make no effort to circumvent the normal flow of business, and that it is mainly put there to provide the penalties in case they do and to hold up that block against such a transfer. Is that right? Conversely, the people who are most likely to come under the penalty would be small groups or individuals.

Mr. HUMPHRYS: I think it is highly unlikely that any non-resident would attempt to gain control of a Canadian company by finding a loophole or a channel through this provision. It would strike me as being a most unwise investment of a substantial amount of money. In preparing a plan to prevent such takeovers one must, of course, deal with the whole question of the transfer of shares. However, even small shareholders are not likely to find themselves in a borderline position with sufficient frequency for it to be a problem. Furthermore, small shareholders do not usually bother to attend or to vote at meetings, and it is only if they vote or attempt to vote that the penalties would apply.

Mr. OTTO: I have one other question which I meant to ask before. Does this provision 16D also apply to an optionee of shares? Suppose I am a non-resident and I have an option to purchase shares from a resident. Does that come under any part of this section or do I have to be the beneficial owner?

Mr. HUMPHRYS: I would not think such an option would come under this section. It would be a private arrangement that would not be the concern of these provisions. These provisions refer only to shares that are held by regis-

tered shareholders or shares held for the use or benefit of another party. Therefore, until the option is exercised, I would not think that the shareholder is holding the shares for the use or benefit of the optionee.

Mr. OTTO: You are not interpreting it in the same way as the income tax department, that an optionee does not come under any part of this trust other than for his own use. An option is not, in your eyes, effective until exercised?

Mr. HUMPHRYS: I would not think so under this act.

The CHAIRMAN: Let us deal now with bylaws.

Mr. HUMPHRYS: Section 16E on page 5 gives the director power to pass bylaws that enable them to explore the shareholder's list. They can require declarations in such terms and at such times from the shareholders as they see fit that will reveal the residence of the shareholder, the beneficial ownership of the shares and any associations that exist between the registered shareholders.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Why has this been made permissive and not mandatory? Would it not help, in your job of policing this legislation, if this were made mandatory?

Mr. HUMPHRYS: To make it mandatory it would be necessary to lay down the specific circumstances under which they could call for the declarations, put in the time limits and put in a variety of provisions which would be difficult and may be unduly restrictive on the corporation. As the statutes lay very definite obligations on the directors, the directors can determine a bylaw which they think will be necessary to enable them to carry out their obligations and then place that before the shareholders so that the shareholders can be satisfied with the procedure adopted.

It is important to avoid the possibility of a situation where the directors might be able to march into an annual meeting and say, "We want declarations from you all, and if you do not submit declarations, you cannot vote". This would be putting an unreasonable amount of power in the hands of the directors. But if the directors must state their plan and then go to the shareholders and say, "This is what we propose to do in calling for information from existing shareholders or from persons who propose to become shareholders or transferees", then the shareholders can be satisfied that the directors are not acting unreasonably, and each company can design the plan that best fits their own circumstances.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But we seem to be taking particular interest in the shareholdings and the transfer of shareholdings in this particular type of company. It would seem to me simpler to make it legal that from now on every transaction of shares in this particular type of company would entail the accomplishment of a statute declaration regarding residency.

Mr. HUMPHRYS: There are a great many transfer of shares that involve small blocks where the circumstances may be well known and where it is quite unnecessary to go into the formality of a statutory declaration. By leaving some element of discretion with the directors we enable the normal investment flow or operation of the company to continue with a minimum of added restrictions, provisions, rules, regulations, and so on, while giving them full authority to get whatever information they need to apply the terms of the act. It is important, in designing provisions such as this, not to create administrative problems that would interfere with normal and incidental investment that could have no possible influence on the question of control.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Surely a statutory declaration should not be so onerous as to impede transactions?

Mr. HUMPHRYS: It is open to the directors to so require if they feel it is necessary. There is a clear obligation on the directors and I think they can be expected to take what action they feel is necessary to enable them to discharge their obligations.

Mr. BELL: Would there be any way whereby, for instance, in their desire to put a transaction through, the stock would be put under a fictitious name, or a certain period of time could be allowed during which they could make their moves? What would prevent this?

Mr. HUMPHRYS: So long as a stock is registered in the name of a resident, there would be nothing to prevent it regardless of who is the beneficial owner, but the registered shareholder, if he shows up to vote, knows whether he is holding a stock for someone else's use or benefit, and if he does so and shows up, he is leaving himself open to penalty. There is a prohibition against these votes in those circumstances. For the reason that the beneficial ownership of a block of shares might be transferred without there being any transfer on the books of the company, the obligation on the directors is restricted to questions of transfers registered on the books; the other provision is put in which will remove the voting right where shares are held by a resident for the use or benefit of a non-resident.

Mr. BELL: In other words, the onus in the first instance is on the person who votes.

Mr. HUMPHRYS: Yes.

Mr. BELL: Suppose a lot of proxies were collected, what responsibility to determine the legitimacy of the proxies is there on the person who votes the proxies?

Mr. HUMPHRYS: This provision says that no one shall exercise the voting rights either in person or as proxy. If someone undertakes to act as a proxy, then he himself is liable to the penalty. It is incumbent on anyone who accepts the nomination as proxy to satisfy himself there is no prohibition against the exercise of his voting rights. I would expect that the proxy form would contain some kind of a declaration; otherwise a person would be most unwise to act as proxy.

Mr. OTTO: I thought you said this provision applies only where someone holds shares in trust for someone?

Mr. HUMPHRYS: No.

Mr. OTTO: This prohibition 16D does not apply to every shareholder?

Mr. HUMPHRYS: Subsection (1) of proposed section 16D applies where a resident holds shares for the use or benefit of a non-resident. That would take in the case where the beneficial owner is a non-resident.

Mr. OTTO: Let us suppose that I am a non-resident and I have given an option to John Jones who happens to be a resident and who owns a large block of shares, and I say I have bought an option to purchase those shares for a specified sum at a specified time and in the meantime I want the proxy to those votes; he gives me the votes. Is there anything prohibited in that whole area? If any proxies were collected by a shareholder or by a director the prohibition would apply only if he happened to collect some proxies which were owned by a resident for the benefit of a non-resident; it would not apply to the purchase of any number of shares which happened to be owned by non-residents?

Mr. HUMPHRYS: No; there is no prohibition against collecting proxies of itself whether on behalf of non-residents or not. However, clause 16D specifies circumstances in which no one may exercise the voting rights pertaining to

the shares and where that prohibition exists. Then neither the shareholder himself nor anyone acting as his proxy may cast those votes.

Mr. OTTO: In other words, you are saying where it has been the custom for certain directors or certain large blocks of shareholders to collect other proxies indiscriminately, now they will have to be much more discriminating to make sure they do not get shares owned by a shareholder on behalf of someone else?

Mr. HUMPHRYS: Yes. If a resident gives his proxy, then the person who acts as his proxy should satisfy himself that the shares in question are not held by the resident on behalf of a non-resident. If the proxy comes to him from a non-resident, he also should satisfy himself that that non-resident, together with associated shareholders, does not own more than 10 per cent of the shares.

Mr. MACKASEY: Does the responsibility lie on the person accumulating the proxies to establish whether or not the proxies are in order?

Mr. HUMPHRYS: It rests on the person casting the vote, whether it be the proxy or the shareholder.

Mr. MACKASEY: How would the person who accumulates these proxies determine whether the person who might send in these proxies from California, for instance, is a Canadian resident or a non-resident?

Mr. HUMPHRYS: The answer to that, I think, is that no one would act as the proxy for anyone else unless he were satisfied he was not leaving himself open to penalty by so doing; he would ask the shareholder who has signed the proxy also to sign whatever declaration is needed to satisfy him that the shareholder was not prohibited from voting. It would be a question of designing an appropriate proxy form and putting the necessary information on it so that the shareholder could indicate his status.

You must keep in mind that this prohibition of voting rights applies only in two circumstances; one is in the case of a non-resident who, together with associates, owns more than 10 per cent, and the second is where a resident is holding shares as nominee for a non-resident. So, he knows. There will not be many cases where a small shareholder does not know whether he has voting rights or not. It is only in the exceptional case that voting rights are suspended.

Mr. MACKASEY: It is all right to minimize the rights of the individual shareholder as insignificant when compared to people with blocks of 10 per cent or more, but in proxy fights these independent shareholders become a pretty potent force.

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: The individual shareholder who owns 2 per cent and 3 per cent can become quite a deciding factor in whether or not a company remains Canadian or non-Canadian.

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: It seems to me there should be a grave responsibility on an individual shareholder, whether he owns one share or 1,000, to satisfy his conscience with regard to whether or not he is Canadian or non-Canadian according to the terms of the act.

Mr. HUMPHRYS: The act does not remove the voting rights for that shareholder if he has one share, whether he is a resident or not.

Mr. MACKASEY: Because he has less than 10 per cent?

Mr. HUMPHRYS: Yes.

Mr. MACKASEY: In the hands of one particular person who is seeking power, or for some particular reason is searching for these proxies, these individuals can represent more than 10 per cent.

Mr. HUMPHRYS: Yes; but in this legislation there is no intention to prevent shareholders as a group having their voice heard in the management of a company. If the shareholders want to combine through proxies and vote out the management, they can do so as is their right. However, a proxy is good only for one meeting; so it does not throw up the problem that is really being dealt with by the provisions; it does not throw up the problem of continuing permanent control.

Mr. MACKASEY: Can a non-resident director accumulate at any time more than 10 per cent of proxies from non-resident shareholders?

Mr. HUMPHRYS: Yes.

Mr. MOREAU: Could it be that any director or any person collecting proxies could collect more than 10 per cent of non-resident proxies provided the beneficial interest of any particular group did not represent 10 per cent.

Mr. HUMPHRYS: That is correct; but the bill also puts a limit of 25 per cent on the total number of shares that can be owned by non-residents. It is important not to take away from shareholders as a group the right to manage their own company; but the ability to combine through proxies and express a concerted view at a particular meeting is a different question to that of permanent ownership of a controlling interest.

Mr. BASFORD: You have implied that the person accepting the proxy has an obligation to find out whether the share is a votable share?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: It seems that the wording in subclause (3) denies that.

Mr. HUMPHRYS: I would not think so, Mr. Basford. The obligation is there. I do not think it is likely that persons concerned deliberately would not try to find out and then say I am ignorant and therefore I am not liable. I think every company concerned will so design its proxy form that this information would be elicited. As I noted, the cases involved will be few in any event, because they involve only two categories, one involving large blocks of non-resident shares and the other where shares are held by resident nominees.

Mr. BASFORD: Why not take the word "knowingly" out of subclause (3); then there is no doubt about it?

Mr. HUMPHRYS: I would not make such a recommendation. I believe as the provision is drafted it will be effective for the purpose intended. If any shares are voted where the violation has not been known to the person concerned, I would not want to recommend that penalties be imposed on him.

Mr. BASFORD: I do not see where you create the obligation on the part of the person holding the proxy to determine that these shares are voting shares.

Mr. HUMPHRYS: Subclause (3) says:

Every person who knowingly contravenes a provision of this section is guilty of an offence—

Then in subclause (2) it says:

—no person shall, either as proxy or in person, exercise the voting rights—

Mr. BASFORD: Thank you.

The CHAIRMAN: Just so that you may govern yourselves accordingly, the Chair is going to suggest that we break off at 12.30.

Mr. GREENE: You are not disturbed with the same connotation in the previous clause with regard to directors; it is only if they knowingly transfer?

Mr. HUMPHRYS: Yes.

Mr. GREENE: You do not think it should go beyond that; that is, that there should be some degree of investigation before the transfer is made?

Mr. HUMPHRYS: There are considerable responsibilities being placed on the directors, but the plan is designed so that it does not place obligations on them that are so onerous and so detailed that it would create a great problem in the normal flow of investment transactions. If an odd small transfer is made where perhaps it should not have been made and the directors are exercising ordinary and diligent discretion, I think it would be rather harsh to hold out the possibility of a penalty being imposed on them at some future time. Under the proposal here the penalty is only if they knowingly violate the section. I think you have an adequate deterrent for careless disregard of the requirement, but with some reasonable degree of protection for directors who act in good faith.

As a practical matter I cannot conceive from my own experience, of any board of directors doing other than acting in the greatest responsibility with this section as they do with relation to other requirements in the statute.

Mr. GREENE: In respect of clause 16E, it seems to me that these powers in this clause are powers which generally are vested within a corporation either under the life insurance act or the Companies Act. Is there any reason they had to be re-enunciated in clause 16E; do the draftsmen believe they are giving some new power in internal management which they did not have?

Mr. HUMPHRYS: I think there was some question whether directors can inquire in this detail into the affairs of the shareholders; that is the purpose of putting this in.

The last of this series of five subclauses contains a series of saving provisions designed to preserve existing rights. The first subclause contains some definitions and also defines the prescribed day, which is September 23, the day the bill was introduced. Subclause (2) provides a blanket exemption from these clauses for a company where more than 50 per cent of the shares are held by a non-resident on the prescribed day. So, in effect, the company which now is controlled by a non-resident is exempt from these provisions.

The next subclause provides that where a non-resident, together with associates, represents more than 10 per cent of the shares on the prescribed day, he may continue to exercise his voting rights notwithstanding the other prohibitions, so long as he does not increase his holdings.

At this point the second of the amendments referred to by Mr. Moreau will be significant.

If you turn to the top of page 7 in the bill you will see it is stated there that where a non-resident holds more than 10 per cent of the shares on the prescribed day, he may continue to exercise the voting right notwithstanding the prohibition so long as the total number of shares held by or for the non-resident and associates does not exceed either the total number of shares held by or for the non-resident and associates at the commencement of the prescribed day or the lowest number of shares held by or for the non-resident and associates on any subsequent day.

Since the bill was introduced questions have arisen concerning the possibility of splitting the par value of shares and issuing shares of a lower par value in exchange for those now held. This would result in an increase in the number of shares, but without a change in the proportion. The first part of this amendment will change the words "total number of" to "percentage of". So, it preserves the rights so long as the percentage of shares owned does not increase.

The second amendment proposes the insertion of a new subclause that deals with the circumstance under which a Canadian corporation holding shares in a life company changes from resident status to non-resident status. A Canadian corporation might own shares in a company and the control of that Canadian corporation might be sold to non-residents. This would change its status to that of a non-resident.

Some questions have been raised concerning what happens in these circumstances. Well, this new subsection states that where that happens, then the shares purchased by that company while it was a resident will be considered to be shares held by a resident for a non-resident. This will mean that nobody can vote them and it will mean they cannot be transferred to another non-resident if non-residents already own more than 25 per cent. It clarifies the result of such transfer of status and also prevents the possibility of circumventing the 25 per cent rule by forming a Canadian company to buy the shares, selling control of the company involved and having the shares transferred to non-residents. This is a remote possibility but in the absence of this that shares could be passed out to non-residents in small blocks.

The third point also deals with the question of stock splits and makes it clear that shares of a reduced par value issued in exchange for existing shares are not covered by the prohibition otherwise applying against allotment shares.

The fourth point gives the directors the right to rely on declarations submitted to them by shareholders or proposed transferees.

There are two more subclauses. As I noted earlier, shares held by a resident for a non-resident are without voting rights. By subclause (4), where this existed on the prescribed day, the shares may be transferred to the beneficial owner notwithstanding the other prohibition. If he wants to establish the voting right he has on the prescribed day the non-resident can do so by having the shares transferred to his own name.

The fifth subclause is transitional and states that if, between the date the bill was introduced on September 23 and the date the law comes into force, the directors approve any transfer that would have been prohibited had the law been in force, then those shares will be without voting rights.

The CHAIRMAN: As I understand it this completes the part of the bill which deals with non-resident control?

Mr. HUMPHRYS: Yes.

The CHAIRMAN: This may be an appropriate moment to break off.

Mr. MOREAU: I was going to suggest we might finish the section he was dealing with.

Mr. BASFORD: As I understand it, this has to go back to your policy remarks, and this section would exclude your operations for non-residents plans; that is, those companies which are presently owned or controlled by 50 per cent non-residents, and that there is no prohibition against the Canadian minority being sold to non-residents?

Mr. HUMPHRYS: That is correct.

Mr. BASFORD: The unofficial parliamentary secretary to the Minister of Finance has indicated in his remarks that he wishes to give serious thought to introducing an amendment to prevent the transfer of that Canadian minority interest to non-residents.

Mr. HUMPHRYS: I would like to make a further comment. If the majority shares are already owned by one of the non-residents, then that non-resident has effective control of the company. In cases we have seen, where non-residents have purchased the control of Canadian life companies, we thought it was fair that the purchaser should make his offer available to all Canadian share-

holders. In most cases all, or practically all, of the shareholders have accepted the offer. If they do not wish to, then that is their right. But if such a change were made, as you have described, it would mean that in cases where control has been sold, and where for one reason or another some Canadians decided to hold their shares even with a minority interest, they would have effectively lost the chance to sell at any respectable price, because it is unlikely that they would get a price for their shares in a minority situation that would compare with the price that had been offered, and that might in some circumstances continue to be open to them from the principal shareholders. So there is another aspect of the question to be considered.

Mr. MOREAU: Do they usually place a time limit to these offers?

Mr. HUMPHRYS: Usually.

Mr. MOREAU: Even if this proposed amendment by Mr. Basford were to take place, at some future time, then the minority shareholders would have had every opportunity to exercise whatever rights or whatever offers were available to them.

Mr. HUMPHRYS: That is right. It is a question of whether such a prohibition would be advantageous, either in the question of control or in the interest of the shareholders, bearing in mind that the statutes already require that a majority of the directors in any event must be Canadian citizens.

The CHAIRMAN: Before we break off, is it your wish that we continue tomorrow, bearing in mind that the house sits at 11.00 o'clock? It has been suggested by the steering committee that you might want to consider meeting at 9.30 to conclude the explanatory notes by the superintendent. I am in your hands. Do you wish to meet tomorrow, or do you wish to defer it?

Mr. MOREAU: In view of the fact that there has been reference made this morning to possibly some difficulty we might have in getting a quorum, and in view of the fact that the witness is not from out of town, perhaps we might think of some other time than tomorrow morning, because I would doubt whether we could get a quorum.

The CHAIRMAN: Might I suggest that possibly Tuesday would be suitable? I realize that we have a number of other committees sitting at that time and there will be conflicts, but that is the price we would have to pay if we moved to Tuesday.

Mr. MOREAU: I so move.

Motion agreed to.

The CHAIRMAN: We have sent out invitations to the Canadian Life Insurance Officers Association inviting them to make representations. I wish to file a letter dated October 23, 1964, as follows:

The Canadian Life Insurance
Officers Association
302 Bay Street,
Toronto 1, Canada

October 23, 1964.

Miss D. F. Ballantine,
Clerk of the Standing Committee on Banking and Commerce,
House of Commons,
Ottawa, Ontario.

Dear Miss Ballantine:

Thank you for your letter of October 22.

Representatives of the association will appear before the committee on Friday, November 6, at the time and place mentioned in your letter.

At the moment we do not have any changes to suggest in Bill No. C-123 and I do not expect that we will wish to present a brief. However, our representatives will be available in case members of the committee wish to question them.

I believe our representatives will be:

Mr. H. L. Sharpe, president of the association and president and managing director, The Northern Life Assurance Company of Canada, London, Ontario.

Mr. A. F. Williams, second vice president of the association and president, Crown Life Insurance Company, Toronto, Ontario.

Mr. J. T. Bryden, chairman of the association's special committee on federal insurance legislation and president, North American Life Assurance Company, Toronto, Ontario.

Mr. A. M. Campbell, president, Sun Life Assurance Company of Canada, Montreal, Quebec.

Mr. R. H. Reid, president and managing director, London Life Insurance Company, London, Ontario.

Mr. J. A. Tuck, managing director and general counsel, The Canadian Life Insurance Officers Association.

Mr. F. C. Dimock, secretary, The Canadian Life Insurance Officers Association.

If, prior to the hearings, we find there is any change in the personnel of our group, I shall let you know.

Yours very truly,

J. A. Tuck.

I bring this to your attention, as well as one other communication from the All Canada Insurance Federation, dated October 26, 1964. It reads as follows:

All Canada Insurance Federation
Suite 801, 500 St. James St., West
Montreal

October 26, 1964.

Miss D. F. Ballantine,
Clerk, Standing Committee
on Banking and Commerce,
House of Commons,
Ottawa, Canada.

Dear Miss Ballantine:

Thank you for your letter of October 22 in which you gave notice that we had been invited to appear on Thursday, November 5, 1964, at 10.00 a.m.

After having given Bill No. C-123 appropriate study we are of the opinion that we have no representations to make and that it would be satisfactory to our member companies if enacted as drafted.

I have yet to receive word from the chairman of our taxation committee but will let you know before the end of the current week if there is any change in our view.

Yours very truly,

E. H. S. Piper,
Manager and General Counsel

I brought these letters to your attention because when these people were invited, the proposed amendments by Mr. Moreau tabled this morning had not been directed to their attention. Therefore, may I have authority to send to them these proposed amendments, in order to see if it changes their opinions?

It is my understanding that we shall meet on Tuesday to continue the present procedure, and that on Thursday we shall have our first witness from the industry making their views known. Is that agreeable?

Agreed.

Mr. BASFORD: I think we should thank Mr. Humphrys and congratulate him on his first appearance before this committee.

The CHAIRMAN: Oh, yes. I thank you very much for bringing this to my attention. On behalf of the committee I wish to take this opportunity to welcome you, Mr. Humphrys, and to congratulate you on your appointment. We are delighted to see you here today.

Mr. HUMPHRYS: Thank you.

The CHAIRMAN: The committee is now adjourned until Tuesday morning.

Appendix A

Canadian Insurance Companies registered under the Canadian and British Insurance Companies Act to transact the business of Life Insurance.

Mutual Companies

1. Alliance Mutual Life Insurance Company
2. L'Assurance-Vie Desjardins
3. The Canada Life Assurance Company
4. Confederation Life Association
5. Co-operative Life Insurance Company
6. The Equitable Life Insurance Company of Canada
7. The Life Insurance Company of Alberta
8. The Manufacturers Life Insurance Company
9. The Mutual Life Assurance Company of Canada
10. North American Life Assurance Company
11. Sun Life Assurance Company of Canada
12. Toronto Mutual Life Insurance Company
13. The Wawanesa Mutual Life Insurance Company

Stock Companies

(a) To which sections 16B to 16E would apply:

1. The Crown Life Insurance Company
2. The Dominion of Canada General Insurance Company
3. The T. Eaton Life Assurance Company
4. The Great-West Life Assurance Company
5. The Imperial Life Assurance Company of Canada
6. London Life Insurance Company
7. The Maritime Life Assurance Company
8. The Monarch Life Assurance Company
9. The Northern Life Assurance Company of Canada
10. La Sauvegarde Life Insurance Company
11. The Sovereign Life Assurance Company of Canada
12. Westmount Life Insurance Company

(b) That would be exempt from sections 16B to 16E

1. The Acadia Life Insurance Company
2. Allstate Life Insurance Company of Canada
3. British Pacific Life Insurance Company
4. Canadian Premier Life Insurance Company
5. Canadian Reassurance Company

STANDING COMMITTEE

6. The Commercial Life Assurance Company
7. The Continental Life Insurance Company
8. The Dominion Life Assurance Company
9. The Excelsior Life Insurance Company
10. Fidelity Life Assurance Company
11. Montreal Life Insurance Company
12. The National Life Assurance Company of Canada
13. The Western Life Assurance Company

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE,

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

(TUESDAY, NOVEMBER 3, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESS:

(Mr. Richard Humphrys, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison	Flemming (<i>Victoria-</i>	McLean (<i>Charlotte</i>)
Aiken	Carleton)	Monteith
Armstrong	Gelber	More
Asselin (<i>Notre-Dame-de-</i>	Grafftey	Moreau
Grâce)	Gray	Munro
Basford	Grégoire	Nowlan
Bell	Greene	Nugent
Berger	Hales	Otto
Blouin	Jewett (<i>Miss</i>)	Pascoe
Cameron (<i>High Park</i>)	Jones (<i>Mrs.</i>)	Rynard
Cameron (<i>Nanaimo-</i>	Kindt	Scott
Cowichan-The Islands)	Klein	Tardif
Caouette	Lambert	Thomas
Chrétien	Lloyd	Vincent
Côté (<i>Chicoutimi</i>)	Macaluso	Wahn
Douglas	Mackasey	Whelan
Frenette	McCutcheon	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 3, 1964.

(10)

The Standing Committee on Banking and Commerce met at 10:00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Asselin (*Notre-Dame-de-Grâce*), Basford, Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gray, Klein, Lambert, Lloyd, Mackasey, More, Moreau, Munro, Nugent, Pascoe, Pennell, Thomas and Wahn. (18)

In attendance: Mr. R. Humphrys, Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman announced that he had been in touch with Mr. Nelson of the Trust Companies Association and had arranged that that Association present their views on Bill C-123 to the Committee on Thursday, November 5, 1964.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of Clause 4 and the proposed amendment thereto, and was questioned. The Clause was allowed to stand.

Mr. Humphrys explained the purpose of sub-clauses 1 to 5 inclusive of Clause 5 and the proposed amendment to sub-clause 1, and was questioned.

And the questioning continuing, the Chairman observed that another meeting would be required for clause by clause study of the Bill before witnesses could be heard. He therefore suggested that the World Mortgage Corporation be heard on Tuesday, November 10th, that the Trust Companies Association be heard on Thursday, November 12th (instead of November 5th), and that the Committee resume clause by clause study of the Bill on Thursday, November 5th.

At 12:00 noon the Committee adjourned until 10:00 a.m. on Thursday, November 5, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, November 3, 1964.

The CHAIRMAN: Gentlemen, I see a quorum and I call the committee to order. I recall that at our last meeting the superintendent was giving us a clause by clause explanation of the bill, and I believe we concluded clause 3 on page seven which ended that part of the bill regarding the non-resident control section.

For your information may I say that some time ago the insurance groups had responded to our invitation to make representations if they so desired, and they had written letters saying that they were prepared to come but that they had no representations to make and no objections to the bill. Yesterday I had occasion to talk to them on the telephone again and they said that if the committee might not consider it an affront they would not attend in view of the fact that they had no representations to make. I said I would convey that to the committee. We had previously scheduled them to appear on Thursday. However, Mr. Nelson of the Trust Companies Association has been very co-operative and has advised me that the Trust Companies Association are prepared to appear on Thursday in place of the insurance companies. They have representations to make and they have prepared a small brief which I will be distributing to the members before the meeting is concluded.

I will now invite Mr. Humphrys to take up his explanations to the committee at clause 4 on page seven of the bill.

On clause 4—*Corporate name in French or English form 16D.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman and members of the committee, clause 4 proposes to enact a new section that will grant the governor in council power to provide a company with a French or English version of its corporate name. This power will be subject to the applicant advertising in the *Canada Gazette* and in the newspapers in terms and for a duration similar to the advertising required with respect to a private bill. This proposed section will make it unnecessary for a company to come to parliament to seek an amendment to its act of incorporation to obtain a French or English version of its corporate name.

The CHAIRMAN: Shall this clause stand?

Clause 4 stands.

On clause 5—*Municipal, etc., securities.*

Mr. HUMPHRYS: Clause 5 of the bill deals with investment provisions. It contains a number of subclauses, all relating to the investment powers of Canadian insurance companies. The first amendment is intended to make eligible bonds or debentures issued by fabriques of parishes in Quebec. This is rather a technical point. For a number of years there has been some discussion between lawyers representing insurance companies in Quebec and the Department of Justice on the point of whether or not a fabrique of a parish is a corporation within the meaning of this act.

Mr. MOREAU: Mr. Humphrys, did you forget to cover the proposed amendment under clause 4 concerning the par value of shares?

Mr. HUMPHRYS: Thank you, Mr. Moreau, I overlooked the fact that among the amendments that were tabled for consideration last week there was a

proposed amendment to clause 4. This amendment amends section 45 of the act, and the change would permit insurance companies to subdivide the par value of their shares below the present minimum of \$10 down to a minimum of \$1. However, this power would be subject, in the case of life insurance companies, to a special provision designed to retain a reasonable balance in voting power between the shareholders and the participating policyholders. In a life insurance company having participating policyholders, the policyholders are entitled to attend and vote at the annual meeting. If companies were permitted to split the par value of their shares say down to \$1, then, in a case where a company now has a par value of \$10, a split to \$1 would multiply the number of shares to ten, and the voting power of shareholders by ten, because under the existing statutes they have one vote per share. This would multiply their voting power, whereas the voting power of the participating policyholders would not be changed. Therefore, in this proposed amendment enabling companies to split their shares it is provided that if the subdivision goes below \$5, then each shareholder will have a vote determined by dividing the par value of his holding by five. Thus, he will have the same voting rights as though they merely split it to \$5.

The CHAIRMAN: Are there any questions on this point?

Mr. LAMBERT: In that regard what is the consideration for the seemingly arbitrary figure of \$5?

Mr. HUMPHRYS: There is already a provision in the statute that permits new companies to be formed with shares having a par value of \$5 or any larger multiple thereof, up to \$100. It was thought therefore that if a new company could be formed with \$5 shares and one vote per share, then existing companies, in splitting shares, should have the same right.

The CHAIRMAN: Are there any further questions on this proposed amendment? If not, will you carry on, Mr. Humphrys?

Mr. HUMPHRYS: To continue with subclause 1 of clause 5, I said that this amendment is to clear up a technical point that would remove doubt concerning the eligibility of bonds issued by the fabriques of parishes as investments for insurance companies.

Mr. LAMBERT: In that regard, at the second reading stage of this bill I queried the minister on why there was a limitation to fabriques of parishes in Quebec. It is my understanding that the organization of a fabrique is really the corporation of the parish. As I know that in other parts of Canada there are also fabriques, why limit this to the province of Quebec?

Mr. HUMPHRYS: I must confess that the explanatory note may be slightly misleading in that respect because the whole question leading to this amendment has arisen in connection with bonds issued in Quebec, and this led to the explanatory note regarding the eligibility of bonds issued by fabriques in Quebec. As the statute is drawn up, it is not so limited. It is written in general terms regarding fabriques.

Mr. LAMBERT: In other words, they qualify in other parts of Canada?

Mr. HUMPHRYS: That is right. Since the bill was published we have had some questions from lawyers representing companies in Quebec suggesting that the amendment as printed in the bill did not go quite far enough. It was pointed out that bonds are sometimes issued by fabriques secured solely by a mortgage, and not necessarily by levying taxes on the property in the parish. In recognition of that, it was thought that the wording should remove the technical point, and therefore an amendment to the bill has been laid before you which would add additional words and remove all doubt.

Mr. THOMAS: May I ask whether these fabriques are equivalent to a town council?

Mr. HUMPHRYS: Its description I think is best set forth in the parish and fabriques act in Quebec. It may also be set forth in the statutes of other provinces, but I think the best short explanation is that it is the board of administration of the parish. I do not think I can explain it any more concisely than that. It is the body that is charged with the administration of the property and the general business and other matters having to do with the whole organization and operation of the parish. Among its operations it is charged with the administration of the property. It may issue bonds or debentures to raise money for parish buildings or for other needs of the parish.

Mr. LAMBERT: It is not merely what we consider a municipal government operation. It also has a religious side.

Mr. HUMPHRYS: Yes, it has religious duties as well.

Mr. LAMBERT: Because I know that in my province the religious parish is organized on the basis of a fabrique, and quite separately there is the town council or the village council.

Mr. MACKASEY: It is the same in Quebec. A fabrique is something that lies within the municipality. It includes the church, the hospitals and perhaps the private schools, the nun's quarters, and so on, which are usually financed by investments or mortgages.

Mr. THOMAS: Would these fabriques be property owning bodies?

Mr. HUMPHRYS: Yes.

Mr. THOMAS: Would the security behind them be just as great as the security behind a municipal corporation?

Mr. HUMPHRYS: I would say so because they have the power to levy taxes on property within the parish, and in most cases the bonds issued are secured by a mortgage on real estate property. We have no doubt in the department concerning the soundness of the security.

Mr. THOMAS: You speak about the fabrique and parish act. Is it in effect in other provinces as well as the province of Quebec?

Mr. HUMPHRYS: I cannot answer that.

The CHAIRMAN: Maybe some member of the committee may be able to assist on this.

Mr. LAMBERT: I am sorry, I do not know the juridical basis of the fabriques in the province of Alberta except that I know that some do exist.

The CHAIRMAN: Does any other member of the committee know?

Mr. GRAY: The act to which Mr. Thomas referred is an act passed by the legislature of the province of Quebec. It therefore would not have application in any other province unless any other province passed, through its own provincial legislature, similar legislation.

Mr. HUMPHRYS: The eligibility of these bonds is dependant on two things in any event. They either must be secured by a mortgage on real estate property or they must be secured by taxes levied pursuant to the provincial laws, so that if the equivalent of the parish and fabriques act is not in existence in other provinces, then bonds would not be eligible unless they are secured by a mortgage on real estate. The only problem is the difference of opinion amongst lawyers on whether a fabrique is technically a corporation within the meaning of this act. If it were so held, there would be no problem, but apparently there is some difference of opinion.

Mr. PASCOE: I should like to know for my own information whether a fabrique is an elected body or an appointed body.

Mr. HUMPHRYS: I do not know the answer.

Mr. LAMBERT: My understanding is that they are elected by the parishioners, they are trustees elected periodically by the parish.

Mr. LLOYD: There is a point about which I am curious. On page nine under clause 5 it says, "the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation".

Mr. HUMPHRYS: That is the next subclause. We have not come to it as yet.

Mr. LLOYD: Does it not deal with the same subject?

Mr. HUMPHRYS: I think it is a little different. I will explain that.

Mr. LLOYD: To come back to the clause we were discussing, the basic difference between a municipality and what I gather is this type of organization would be the power to tax so as to meet its obligations. The municipality has the right to tax, whereas a fabrique would not.

Mr. HUMPHRYS: I believe a fabrique in Quebec does have that power.

Mr. LLOYD: What is lacking here is an explanation of the legal construction of a fabrique if we are to judge the adequacy of the law.

Mr. HUMPHRYS: The fabriques in Quebec do have the authority under the Quebec parish and fabriques act to levy taxes on property within the parish. This amendment indicates that these bonds will be eligible if they are secured by taxes levied pursuant to provincial law or if they are secured by a mortgage on real estate.

The CHAIRMAN: Are there no further questions on subclause (1) of clause 5?

Mr. HUMPHRYS: Subclause (2) of clause 5 at the top of page nine proposes an amendment that will make eligible certain additional bonds that are secured by provincial subsidies. This is intended principally to make eligible certain hospital corporation bonds that are secured by subsidies from provincial governments.

Mr. LLOYD: Could I come back to the use of the term "corporation"? What was the objection of the lawyers to the use of the word "corporation", and why were you applying it under 5(b) where you make reference to it?

Mr. HUMPHRYS: If fabriques were admitted to be corporations within the intention of this act, then bonds issued by fabriques would have qualified under the clause dealing with bonds issued by corporations; but when there was a doubt about whether fabriques were corporations, then there was doubt whether they qualify under corporate bond provisions. That is the reason for this amendment.

M. LLOYD: I am sorry, I misunderstood your observation.

Mr. HUMPHRYS: Subclause (2), as I explained, deals only with bonds or debentures that are secured by provincial subsidies so that they are in every respect as good as provincial obligations.

Subclause (3) enacts a small amendment having to do with the mortgage bond clause. At present companies can invest in bonds secured by a mortgage on real estate or on a company's property used in its business on other assets, but there is doubt whether they can invest in bonds secured by leasehold property. In recent years there have been a number of cases where bonds have been issued secured by very large buildings built on leasehold property, and the security is good. The words "or leaseholds" are put in here to enable those bonds to qualify.

The CHAIRMAN: Are there any questions?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could I go back for a moment to (d) where it says "debentures issued by a charitable, educational or philanthropic corporation". Would that include a hospital such as the ones we have in British Columbia in this category? I have in mind my own area where we have a municipal council financed by a sort of local taxing authority; the rest is provincial and federal. I doubt whether it could be defined under those terms as a public institution is not charitable, educational or philanthropic.

Mr. HUMPHRYS: I raised that question with the Department of Justice, Mr. Cameron, because I had the same question in my mind, but I have been assured by the lawyers in that department that the terms "charitable, educational or philanthropic" are broad enough in their legal interpretation to include a hospital organized on that basis.

Mr. LLOYD: Mr. Chairman, I am still a little puzzled about the wording in clause 5(b) on page eight. It says "the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation in Canada", and then it goes on "or in any country in which the company is carrying on business". The wording confuses me a little. Would you explain the meaning of this particular phrase?

Mr. HUMPHRYS: I think that we are dealing here only with part of a section, but the introductory words are these: "A company may invest its funds or any portion thereof in—"

Mr. LLOYD: "The company" meaning the insurance company?

Mr. HUMPHRYS: Then it goes on, "the bonds, debentures" and so on.

Mr. LLOYD: In essence they make an investment in bonds or guarantees by a municipal corporation in Canada or any other country where they are doing business. They could be doing business in South America and making an investment in the municipal bonds of that country. I understand that is the intention.

Mr. HUMPHRYS: Subclause (4) deals with bonds or debentures issued by corporations, and this change is principally a drafting change. At present debentures issued by a corporation are eligible investments if the corporation has met a certain dividend record on its preferred shares or common shares. This change establishes that dividend record by cross reference rather than spelling it out in detail, but without any change in the actual dividend requirement. The amendment also, by using the cross reference to the eligibility requirements for the common shares, will enable the company to invest in debentures of a corporation where that corporation has had earnings sufficient to enable it to pay a dividend on its common shares at a 4 per cent rate, whether it has actually paid the dividend or not. This is the new earnings test that is being proposed in this bill for common shares. I can explain it in greater detail when we get to the subsequent paragraph dealing with common shares, but this amendment will enable the company to invest in debentures of a corporation if the common shares or the preferred shares of that corporation are eligible investments.

Mr. LAMBERT: At this point I think I can see what you are doing, but what puzzles me is who is the person who is going to substitute his judgment for the judgment of the board of directors of the company in whose shares investment is desired. In other words, it is the board of directors of the company who decide whether they will issue a dividend or not, having regard to all their cash requirements and other long term programs, but now someone else's judgment is being substituted. Is that to be the superintendent of insurance?

Mr. HUMPHRYS: No.

Mr. LAMBERT: Who is to determine whether this company could have issued dividends at the prescribed rate or at the minimum prescribed rate?

Mr. HUMPHRYS: That is the new eligibility test for common shares, dealing with paragraph (1). There is a cross reference to it here.

The CHAIRMAN: I think now is a good time to cover it.

Mr. HUMPHRYS: It is intended that it be not a matter of opinion, Mr. Lambert. It is intended that it will be a question revealed by the financial statement of the company; so one would examine the financial statement,

determine the earnings of the company, and set aside whatever earnings are needed to meet the obligations that have to be met before it may declare a dividend on its common shares. Then, if what remains is enough to have enabled them to pay a dividend at 4 per cent on the common shares, each year for a period of five years, the common shares would be eligible. So the test will be based upon an examination of the financial statements of the company over a period of five years.

Mr. LAMBERT: Your explanation really confirms my thought that someone is substituting a decision or an appreciation of the financial record of a company for an actual performance which has been decided by the board of directors of that corporation.

Mr. HUMPHRYS: I think that is a fair statement.

Mr. LAMBERT: Whose judgment or discretion is now going to be exercised? Is the reviewing officer in your department?

Mr. HUMPHRYS: Any company wishing to make an investment would look up the financial record of the corporation that had issued the common shares and determine whether in its view and in the view of its legal officers the conditions prescribed in the law are complied with; that is, that the company has had earnings that would have enabled it to pay a dividend of 4 per cent on its common shares each year for five years had the board of directors decided to do so.

If they are satisfied, then the investment can be made. We would review the investment and if we thought it was dubious we would raise the question with the company. We would discuss it with their legal advisers. If we still have a difference of opinion we would refer the matter to our legal advisers, being the Department of Justice, and hope to reach some meeting of minds.

Mr. LAMBERT: Yes, and ultimately somebody has to come to the decision that this company qualified under this amended legislation or this company did not qualify. That, I presume, boils down ultimately to you.

Mr. HUMPHRYS: No. I suppose if you are going to boil it down to the ultimate it would have to be a court, because there is nothing in this law that says the opinion of the superintendent or the minister, or any other designated official, is the binding opinion. It would be a matter of law.

This is not the only place in the statute where earnings tests are prescribed as the test of eligibility for investment in certain types of securities. There is in other cases the problem of assessing the financial statement to see whether the earnings have been adequate or not to meet the prescribed amount.

Mr. LAMBERT: I take your explanation, but I still feel there is an element of uncertainty in this regard. If a dispute comes up when the directors of the insurance company have made the decision that this is a proper type of common stock in which to invest, and your officers—and when I say your officers I mean your officers or you as superintendent of insurance—are not satisfied, where do we go from there?

Mr. HUMPHRYS: The superintendent has the power to disallow an asset in a company's financial statement.

Mr. GELBER: That is true now too, is it not?

Mr. HUMPHRYS: Yes. If the company disagrees with the ruling of the superintendent, it can go to the exchequer court.

Mr. THOMAS: Mr. Chairman, I have the feeling that in some respects I will go part way with Mr. Lambert with regard to this provision.

Suppose the company has had a very good rate of earnings and performance and runs into a bad year and is unable to pay a 4 per cent

dividend, or its earnings fail to amount to 4 per cent. For five years, under this legislation, that company is disqualified as an investment for a life insurance company, because this proposal is that it shall pay in every one of the preceding five years. Yet, because of one poor year, in spite of an excellent performance by the company, it would be disqualified for five years.

Mr. HUMPHRYS: That is correct.

Mr. THOMAS: It seems to me it would be safer to leave this matter of investment with a greater measure of flexibility in this respect for judgment or expression to be used by the board of the insurance company that is investing.

I think we should give this matter further consideration.

Mr. HUMPHRYS: Mr. Thomas, I should point out that among the investment provisions is one that enables the company to invest in any way it chooses apart from the prescribed classes in the act. At the present time it may invest up to 5 per cent of its assets in that fashion without regard to these prescriptions.

Among the amendments proposed in this bill is one that would increase that 5 per cent limit to 7 per cent. Therefore, companies do have a substantial area of freedom to exercise their own discretion in investment matters. If a case were to arise such as the one you have described in which a company had missed a dividend, its shares would not qualify under this prescribed clause but the insurance company could nevertheless purchase those shares if it wished under the clause that permits them this area of freedom to invest in their own discretion.

Mr. MOREAU: Would you not say that these proposed amendments are all designed to allow more freedom of investment to the insurance company rather than in any way to limit the five year period currently in the act? The amendment provides that the determining factor will be whether they are in a position to pay the dividend whether they choose to do so or not. Surely this is a liberalizing measure rather than a restrictive one.

Mr. HUMPHRYS: That is right.

Mr. THOMAS: How is the department or how are you yourself to apply these regulations? What happens if a company has purchased shares which they are not entitled to purchase or are holding shares which have gone bad during the course of several years? How do you protect the public? What is your function in this case?

Mr. HUMPHRYS: There are three questions there, Mr. Thomas. The first is how do we go about it.

We require companies to file with us twice a year a list of all the investments they have made. We examine that list and test it against the requirements of the act to make sure that all the investments made are eligible under the provisions of the act. If we find any on the list which we doubt are eligible, we raise the matter with the company and discuss it with their legal advisers, if necessary referring it to our own legal advisers. If the decision is that the stock was ineligible, the company is required to dispose of it or, if it wishes, regard it as an investment made within this area of freedom to which I have just referred, commonly called the basket.

Mr. THOMAS: That basket can only amount to 5 per cent of the company's assets at any one time.

Mr. HUMPHRYS: Under the present law, yes, but there is among these amendments a proposal to increase the limit from 5 per cent to 7 per cent.

The CHAIRMAN: May I ask you, Mr. Thomas, to withhold your point until we get to the basket area, when I will be pleased to ask you to raise it again, if that course meets with your approval.

Mr. BASFORD: I have some questions in regard to (4), (5) and (6). These have been described as liberalizing measures. I would like some statistics to show how liberalizing they are. What area of investment are we opening up to an insurance company? How large?

Mr. HUMPHRYS: In connection with debentures, guaranteed investment certificates and preferred shares, there is not very much change because the amendment here is principally a technical one to describe the qualifications by cross reference.

There are two changes with respect to common shares; one reduces the seven year dividend requirement to five years, and the other proposes this new earnings test that we have just been discussing.

My information is that this would increase the number of common shares eligible for investment by something of the order of 25 per cent.

Mr. BASFORD: I understand there are now some 100 companies whose shares are eligible for insurance company investment.

Mr. HUMPHRYS: I have some figures on that. My information here, provided by some of the life insurance companies, is that there are 306 Canadian stocks eligible under the existing rules, but a number of those would not be regarded as appropriate investments for insurance companies because they might be very closely held or they might be in very small companies, or perhaps some of the mining stocks that have a very low value. That total would be increased to 389 under these new tests.

Of the 389 eligible stocks, it is considered that about 185 would be appropriate investments for insurance companies.

Mr. BASFORD: I take it that the previous number of truly appropriate stocks was about 160.

Mr. HUMPHRYS: Approximately that, yes. The figure I think is 141.

Mr. BASFORD: And that is now going up to about 185, you estimate?

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Would it be inappropriate or difficult for me to ask that a list of these companies be appended to the proceedings?

Mr. HUMPHRYS: I have not such a list.

Mr. BASFORD: Therefore it would be inappropriate to ask for it?

The CHAIRMAN: That would seem to be the correct assumption, Mr. Basford.

Mr. BASFORD: May I have some indication of the value of these investments?

Mr. HUMPHRYS: The total outstanding shares of all these companies? Is that what you mean?

Mr. BASFORD: Yes.

Mr. HUMPHRYS: It would be very difficult to accumulate that information.

Mr. BASFORD: I am just anxious to see that these liberalizing measures are worth while. We are adding to the list 44 companies, and I am anxious to see what these 44 additions represent and whether this liberalization is worth while or whether it should go further.

Mr. HUMPHRYS: With this change, which in itself could qualify some 40 additional stocks, coupled with the increase in the basket provision from 5 per cent to 7 per cent, I believe companies will be enabled to buy any common shares that they might wish to buy because the experience has been that they have not used so-called basket provision to the full extent available to them even under the present law.

I do not believe any company would find itself in a position where it could not buy a particular issue of common shares if it wished to do so.

Mr. BASFORD: I take it the companies are now limited to investment in these types of portfolio securities to 15 per cent.

Mr. HUMPHRYS: That is the present law, yes. This bill proposes an amendment to that requirement that will increase the 15 per cent limit to 25 per cent.

Mr. BASFORD: Can you give us some indication of how much of that 15 per cent has been used?

Mr. HUMPHRYS: The latest figures we have show that companies have about 4 per cent of their assets invested in common shares.

Mr. BASFORD: What is the explanation of the company for not using the 15 per cent?

Mr. HUMPHRYS: I think any such explanation should probably come from the companies themselves rather than from me.

Mr. BASFORD: By increasing from 15 per cent to 25 per cent you are authorizing a greater investment. How do you intend to deal with it?

Mr. HUMPHRYS: So far as the department is concerned we would not take any steps to attempt to influence companies in their investment decisions other than to see that they make their investments within the requirements of the law.

These amendments will widen the area of investment so the companies may use it if they wish, but there is nothing in the statutes that will require them to invest in one way or another within that area.

Mr. BASFORD: What are the policy considerations which apply to not only having an authorized maximum but also a required minimum?

Mr. HUMPHRYS: I do not know whether I should answer that.

The CHAIRMAN: You have raised a question of policy, Mr. Basford, and I do not think I should ask this witness to deal with a policy matter.

Mr. HUMPHRYS: I believe the minister dealt with that point to some extent in his remarks on the second reading.

Mr. GELBER: I wonder if we are not on the wrong tack in this type of questioning. It seems to me that the importance of this amendment is that we are opening up a whole new area of investment in companies that may not be public companies today but have a very good earning record, and if they are going to become public they can have the support of the insurance companies.

It seems to me that asking about the existing list of companies is not productive. The truth of the matter is that there are not very many companies in which insurance companies can invest, and if we can open the area to private companies or subsidiaries of foreign companies, enabling them to use the advantages of these amendments, then there is a possibility of increasing the list of blue chip companies.

In point of fact, the existing list is limited and this makes it possible to widen the list extensively. A company no longer has to have a five year public earning record nor even to pay dividends to qualify, and yet it may have an excellent record. It seems to me that the amendment here is very broad and very important.

Mr. MORE: I think part of my question has been answered. A lot of this is window dressing. It seems to me from the statistics I have read that the present opportunities for investment are not being used to their full advantage. They are liberal enough, and there could be a tremendous amount more investment than there is at the present time. I have read figures that intimated that the present requirements have not been used to the extent of something like \$1,300 million. There is an opportunity under the present law for further investment to this extent, and it is not being used. Therefore, in my view this seems to be window dressing and nothing else.

Mr. HUMPHRYS: I could comment on that. While the industry average is 4 per cent, as I have indicated, there is considerable variation from company to company within the industry, and properly so because a company should not invest heavily in common shares unless its financial position is such that it can afford to absorb the fluctuations in value of that type of investment.

There is also the consideration that the present investment limits are in terms of book values of the company's securities, and the proportion that they have invested in common shares if computed on a market value basis would be about double the 4 per cent figure. The figure for some companies would be considerably higher.

Mr. MORE: What you are saying is that some companies have used the widest terms possible, and this would enable them to go further?

Mr. HUMPHRYS: Some companies have used substantially more than the average would indicate. I do not think any Canadian life company has yet reached the present limit. However, the industry has requested this additional freedom of movement, so it is not unlikely that some companies at least will take advantage of it. I would not expect the entire industry to move up on an average to anything like the new limit, but some companies I think might well take advantage of the increase.

Mr. WAHN: Mr. Chairman, I think it has been pointed out that common shares of a company may become ineligible if the company, for example, has a loss in one year or in one year earns less than 4 per cent, even though over the five year period the average earnings of the company are entirely satisfactory. Is there any reason why a decision was made to require earnings each year equal to the 4 per cent rather than taking the average earnings over a reasonable period, or perhaps providing average earnings as an alternative base?

Mr. HUMPHRYS: The present dividend requirements and those that have been in the law for a long time require a continuous seven year dividend record. I think the reason for requiring a continuous record rather than an average is a decision based on the strength of the test that it is desired to adopt. A continuous record is, of course, a stronger test than an average. It has certain advantages in connection with eligibility for common shares, because an interruption in the dividend record is likely to indicate some serious change in the pattern of the company's business or in other economic conditions that, in the absence of other evidence at least, might bring into question the ability of the company to continue to pay dividends in the future, and perhaps the value of its shares. So, in using a dividend test, I think the element of continuity is a very important aspect.

As a point of interest in this connection, there is also an earnings test prescribed with respect to investment in debentures, and in that case it is prescribed on an average basis—that is, if the earnings have been sufficient on the average over a period of years.

Mr. WAHN: May I continue on this line for a moment?

I can quite understand why a continuity of dividends is important; a company can pay dividends in a particular year even though it does not earn that amount in that year because it may have reserves of earned surplus out of which dividends can properly be paid. But in preparing this legislation, the decision has been made to get away from the dividend test, or rather to enlarge it to permit eligibility based on earnings, which is a completely different concept.

I wonder whether in drafting the legislation you merely followed the precedent which has been followed by the dividend test of requiring continuous dividends, without realizing that you are really moving over into a different

concept when you go to earnings. If in a single year a company in an industry that may have fluctuating earnings gets below 4 per cent then its shares cease to be eligible.

Mr. HUMPHRYS: Yes.

Mr. WAHN: There is a different concept once you switch to earnings. Dividends can be paid out of accumulated earnings, but when eligibility is based on earnings, then in a single year if a company loses money or if it falls below 4 percent you break the record of eligibility and there is no recourse.

In other words, in respect of dividends you can draw on your surplus and, thereby, maintain it. It occurred to me, in looking at this, that perhaps thought had not been given to the basic difference between the dividend test and the earnings test, and in the case of the earnings test, average earnings rather than continuous earnings each year would be a more appropriate test.

Mr. HUMPHRYS: Mr. Wahn, the point was not overlooked, but in proposing the earnings test in respect of common shares it was considered important to achieve the element of continuity and, consequently, care was taken to prescribe that there must be earnings every year. To that extent the test is somewhat more severe than the dividend test because, as you pointed out, a company can pay dividends out of accumulated earnings. The main purpose of the earnings test was to render eligible shares of Canadian companies that are subsidiaries to foreign companies, where their earnings may have been good but where no dividends were paid. In the normal case it is highly unlikely a company would have enough earnings to pay dividends on its shares and not pay them, unless the company is a subsidiary and the parent decides to retain the earnings within the company; so, the significance of this new earnings test will be principally in the area of Canadian subsidiary companies.

As I mentioned earlier, there is also the existence of the basket provision, which enables companies to invest in these shares if the company has missed a dividend or has had bad earnings in a particular year.

The CHAIRMAN: Have you a question, Mr. Klein.

Mr. KLEIN: Mr. Chairman, I am just wondering if we are not creating a monster. In the case of a company which ordinarily qualifies under the act and then under the provisions of the act it no longer qualifies I am wondering whether we would not be placing that company in a position where its creditors, who normally might go along with this company, might fear the financial position of such a company would be sort of blacklisted by the superintendent of insurance, and whether this might not create a run on that company by the creditors.

Mr. HUMPHRYS: This amendment will not narrow the range of assets that are eligible investments.

Mr. KLEIN: I beg your pardon.

Mr. HUMPHRYS: These investments will not narrow the range of assets that are eligible investments. Nothing proposed in this bill will render ineligible an investment that formerly was eligible.

Mr. KLEIN: I am thinking of a company in which common share investment has been made, and then it fails to pay a dividend and runs into a problem with your department. Would that not invite the creditors of that particular company to make a run on the company?

Mr. HUMPHRYS: That has not been the experience. Of course, there have been cases all through the years where, say, a particular share might be an eligible investment and the company might buy it, and then the issuing corporation runs into difficulty and does not pay a dividend. That means the company could not buy any more of these shares until the dividend record has been restored.

Mr. KLEIN: I thought the object of the amendments was to stimulate Canadian enterprise on the part of a company in which the investment is made rather than to the advantage of the investing company.

Mr. HUMPHRYS: I believe that the amendments are broadening the range of investments eligible for insurance companies. The provisions laying down the eligible requirements are drawn from the point of view of the insurance company essentially, and looking through the insurance company to the safety of the policyholders. Now, so far as the investment provisions can be broadened while still retaining the desired degree of safety, then it is clearly the policy evidenced by these amendments to make such a broadening. But, I think it cannot be regarded solely as a means of creating a market for shares of Canadian companies. It will partly do that. But, the other aspect must be kept in mind, that the main purpose of this whole pattern of investment restrictions is to look to the safety of the company and the protection of its policyholders.

Mr. KLEIN: Yes, but at the same time is it not to stimulate Canadian business?

Mr. HUMPHRYS: In so far as the eligibility requirements can be broadened it will create a broader market for Canadian shares and will have the effect of stimulating the market for them.

Mr. KLEIN: If one of the purposes is to stimulate Canadian business and the investment is still restricted, to use Mr. Gelber's expression, to blue chip investments, then we are really saying to the insurance companies that they can invest in blue chip investments and, therefore, you are investing in companies that do not—

Mr. HUMPHRYS: If I may interrupt, these amendments are broadening the range of common stocks that will be eligible for investment.

Mr. KLEIN: But they still will be restricted to what we ordinarily would define as blue chip investments?

Mr. HUMPHRYS: Well, they are restricted in this provision to shares that have a five year dividend or earnings record, and clearly if there is legislation to prescribe investment restrictions looking to the safety of the policyholders one must have some rules of eligibility. But, you must keep in mind too that the basic provision to which I have referred leaves a substantial area of free investment at the companies' discretion.

Mr. KLEIN: I have one more question. Do you think that the ordinary investor—and I am not referring to the investor under the act—will use as a yardstick in respect of whether he, himself would make an investment, the eligibility of that particular company under your act?

Mr. HUMPHRYS: I believe the provisions of this act are used in other respects as a pattern for investment.

Mr. KLEIN: If that is true might it not retard the very stimulation this act wants to bring about?

Mr. HUMPHRYS: I do not think I would use the word "retard"; I would say that if legislation is to be adopted that will lay down a pattern of investment for insurance companies then it inevitably will have to have some rules in it that will render some investments eligible and other investments not eligible. So far as other investors use that as a standard then it will have an effect that is directly related to the severity of the rules, and I think that definitely would be accepted. I believe that this legislation has for its primary purpose the protection of the policyholders; otherwise, there would be no need for any restrictions at all on investments of insurance companies. So, I do not see how it would be possible to accomplish that objective and at the same time set up a pattern that would be very broad or be suitable for other types of investors.

The CHAIRMAN: Mr. Lloyd, I know that you are anxious to attend another committee meeting. Would you proceed now.

Mr. LLOYD: Mr. Chairman, I would like to bring us back to the objectives of this legislation and I would like the witness to indicate whether my assumptions in this case are well founded.

Mr. BASFORD: If I may interrupt, Mr. Chairman, we never have been away from the objectives of this legislation.

The CHAIRMAN: As some of the members have to attend the defence committee meeting perhaps we should proceed and have Mr. Lloyd continue with his question.

Mr. LLOYD: Despite the observation of my friend may I respond to that observation in this way. A minute ago the witness said the primary purpose is the protection of the stockholder. Is it not a fact that Canada has had a number of instances where closely held family corporations have been the subject of takeovers?

Mr. HUMPHRYS: Yes.

Mr. LLOYD: And this meant the formation of considerable quantities of capital to acquire their holdings. In such cases you are most likely to find, for various reasons, tax reasons and others, the nonpayment of a constant dividend record and, on the other hand, a very good record of earnings.

Mr. HUMPHRYS: That is correct.

Mr. LLOYD: Therefore, the provisions of this statute enable insurance company funds, to the extent their directors wish, to be employed in the takeover of a private corporation which did not have a high dividend record but a very excellent earnings record. Am I not correct that in this respect the act is constructive and does it not provide an opportunity for insurance companies to use their massive funds to assist in takeovers of Canadian undertakings and to compete, say, with foreign firms with capital for the same purpose. Does this not add something very tangible in respect of Canadian holdings of Canadian companies?

Mr. HUMPHRYS: I think that is correct.

Mr. LLOYD: Then, in respect of earnings in each such year, under subclause 5 (1) (ii)—

The CHAIRMAN: What page was that?

Mr. LLOYD: That is at page 10, subclause 5 (1) (ii). Mr. Thomas as well as Mr. Wahn are concerned about the averaging of earnings. I am only trying to reconcile what you said with the wording of the bill. It provides that a company must either pay dividends for a five year period in each year upon its common shares at a certain rate or have earnings in each year available for the payment of the dividend upon its common shares. Is the legislation clear in this respect? Does it leave any doubt about what is meant? I am wondering whether or not it does. It says:

had earnings in each such year available for the payment of a dividend upon its common shares.

Does this mean earnings available from previous years or precisely what you stated, had earnings of that particular year available? I suggest to you the way it reads one might put forward the interpretation that it had earnings available in that year but it did not pay a dividend. If your purpose is to insist the earnings of that particular year must equal 4 per cent of the capital stock of the company then you may have to clarify the wording. It might clarify the intention if the word "available" was changed to "sufficient".

Mr. HUMPHRYS: The intention is that the amount involved shall have been earned in the particular year, not that the earnings are available from a previous year.

Mr. LLOYD: But is your legislation clear on that point?

Mr. HUMPHRYS: I could raise that point with the draftsman. I believe that the interpretation would be that the company has had earnings in the year—which would be the amount earned in the year—and that these earnings are such that they are available for the payment of a dividend, meaning that after having met other requirements that must be met before a dividend is paid, then the remainder would be sufficient to enable the company to pay a 4 per cent dividend.

Mr. LLOYD: I can only suggest you should check your wording in order to carry out the intention.

The CHAIRMAN: We will have that checked with the justice department and the draftsman, Mr. Lloyd.

The next I have on the list is Mr. Munro.

Mr. MUNRO: If I may address through the Chairman a question to Mr. Humphrys, is it your feeling that one of the reasons why this 4 per cent is the outside limit to which on an average these companies have invested in common shares is due to the limited number of companies that come under the requirements of the present legislation.

Mr. HUMPHRYS: As I indicated earlier, I believe that the industry itself should probably respond to this question. I can only give my own impression, that companies may feel that the prices are high in relation to the dividends being paid. They may feel they can get a better return in other types of investments. They may be uneasy about the requirement presently for carrying these shares at market value in their balance sheets. I think perhaps there would be some element also in respect of the volume of shares that are available for investment.

Mr. MUNRO: Well, if those reasons would apply do you feel that raising this outside limit from 15 per cent to 25 per cent is going to change the picture?

Mr. HUMPHRYS: Personally, I would not expect a startling change but I would expect some companies at least would make use of the additional freedom.

Mr. MUNRO: Again, through the Chairman to Mr. Humphreys, in respect of this 4 per cent, is it possible to have any information on what portion of that 4 per cent was invested in common shares and because of its dividend record being poor it had to take advantage of the basket provision? Would it be a very minimal portion of the 4 per cent which fell under that provision?

Mr. HUMPHRYS: None of those would be basket investments.

Mr. MUNRO: Well, then, do I interpret that to mean the basket provision is not really being used at all?

Mr. HUMPHRYS: Well, companies have between one per cent and two per cent of their assets invested under the basket provision. But, those investments under that provision would not be all shares; there would be a variety of investments.

Mr. MUNRO: Could you give us the percentage which would be shares under the basket provision?

Mr. HUMPHRYS: Yes.

Mr. NUGENT: Mr. Chairman, would these questions not be more appropriate when we are taking up the amendments to the basket provision?

Mr. HUMPHRYS: At the end of 1963 the Canadian life insurance companies had a total of \$166 million of investments under the basket provision and of that \$29 million was in stocks.

Mr. MUNRO: There is one point that Mr. Humphrys mentioned earlier which I did not quite get. You mentioned this 4 per cent was based on book value.

Mr. HUMPHRYS: Yes.

Mr. MUNRO: Then you said it would be almost double that if—and then you went on to say something which I did not hear.

Mr. HUMPHRYS: It would be almost double that if the shares were carried in the company's balance sheet at their current market values.

Mr. MUNRO: That is, double that in respect of the over-all investment.

Mr. HUMPHRYS: Something over 7 per cent.

Mr. MUNRO: In respect of the over-all assets of a particular life insurance company?

Mr. HUMPHRYS: Of the whole group of companies.

Mr. MUNRO: One further question, again through you, Mr. Chairman, to Mr. Humphrys; what percentage of this 4 per cent would be Canadian stocks?

Mr. HUMPHRYS: Slightly less than one half.

Mr. MUNRO: How much would that amount to approximately?

Mr. HUMPHRYS: Total investments of Canadian life insurance companies in common stocks at the end of 1963 amounted to \$423 million in book values, so the Canadian stocks would account for around \$200 million.

Mr. MUNRO: Some mention was made of the limiting effects of the earnings test; if there was one year where earnings were not made it would break the chain and that company no longer would qualify under this new provision. Would there be any serious objection if there were two years, say, of earnings and one year in which there were no earnings but the company paid dividends in that year—and I am using this as an example—and in the latter two years the earnings were again up to the limit? In that case could dividends not be substituted for earnings, thereby not breaking the chain, and the company still would be eligible?

Mr. HUMPHRYS: I am afraid that to adopt a test like that really would destroy the validity of either test because, as pointed out in some cases, companies will pay dividends out of accumulated earnings and continue the dividend record, but if you try to design a test that allowed a company to swing back and forth from earnings to dividends not only would the test be difficult to apply but it substantially would destroy, in my opinion, the value of both tests. With the existence of the basket provision I believe that one need feel little concern about the possibility of a record being broken because companies have lots of room in the basket provision to make these investments.

Mr. MUNRO: The only disturbing factor is—you can keep going back to the basket test if a company does not qualify under either the dividend or earnings test—that the number of companies that have fallen under the basket provision is almost infinitesimal. I think you mentioned a figure of \$29 million.

Mr. HUMPHRYS: This is the investment that companies have made and held at the end of 1963 under the basket provision, but they may buy a share under the authority given by the basket provision and hold it under the heading until it has achieved a dividend record; but once it is achieved the

required record they would transfer it out so, in this way, it is not possible to measure the real effectiveness of this basket provision merely by looking at the balance remaining there at any one time.

Mr. MUNRO: I suppose it would be impossible to assess the amount of incentive this basket provision has given to companies over the past in order to measure its effectiveness.

Mr. HUMPHRYS: It is quite widely used. At the present time, and when I say that I mean the end of 1963, which is the last point of time on which we have statements. At that time companies had about $1\frac{1}{2}$ per cent of their total assets invested under this basket provision. The range was from zero in some cases to a maximum of perhaps 4 per cent. The provision has been used a good deal in the way that I have described; that is, companies may find an investment they want to make. If it does not qualify under the specific provision they can buy it under the basket provision, hold it, and after it achieves the dividend record or otherwise qualifies they can transfer it out and hold it under the other provisions of the statute.

Mr. NUGENT: On a point of order, Mr. Chairman, would it not be more appropriate to go into this when we discuss the amendment to the basket clause, when there will be a general discussion on that clause? There are a good number of us here who would like to enter into that discussion but I think it would be more appropriate if we discussed it at that point in our proceedings.

Mr. MUNRO: I will not pursue it any further. However, there is one other question, which I do not think relates to the basket provision.

Could you give us information in respect of whether the present earnings test has an effect on the takeovers of existing companies, and I am thinking, in particular, of Atlas Steel, Canadian Oils and Labatt's. Would these takeovers have been affected in any way by this particular amendment?

Mr. HUMPHRYS: I believe it is impossible to answer that in any definite way because no one can be sure of the investments insurance companies may have made in those shares had they had more freedom to invest than is presently the case.

Mr. MUNRO: If it was not for this provision would insurance companies be prohibited from participating in that change of ownership in respect of these three companies?

Mr. HUMPHRYS: I am not sure at the moment, but I believe that probably the shares of these companies were eligible in any event.

Mr. MUNRO: Thank you, Mr. Chairman.

The CHAIRMAN: Would you proceed, Mr. Gray.

Mr. GRAY: Mr. Chairman, to carry on the point that Mr. Munro raised, I am puzzled about the explanatory notes in light of an answer given by Mr. Humphrys. I gather from the answer that you gave that you cannot intermingle the two tests, that you either have the dividend or the earnings test.

Mr. HUMPHRYS: Yes.

Mr. GRAY: You cannot have part of one and part of the other to ascertain whether or not your stock is a good investment under this clause. On page 9 of the explanatory notes dealing with the amendment, it says:

The purpose of this amendment is to authorize as investments debentures issued by a corporation that has had earnings over a period of five years—

And so on; and then in the explanatory notes on page 10, referring to common shares, it refers to this:

Also, it would authorize as investments common shares of a corporation that has had such earnings in each year of a period of five years—

Now, in reading the wording of the paragraphs which are going to be amended, and so on, I thought that the tests were the same, and that you had to look at the provision on each page. Is there a difference between debentures and common shares?

Mr. HUMPHRYS: There is a difference in the earnings test. In respect of debentures the earnings test is on an average basis: it requires a corporation to have earnings in a period of five years ended less than one year before the date of investment that have been equal in total to ten times the interest requirements and in each of any four of the five years have been equal to at least one and a half times the annual interest requirements. So the earnings test applicable in the case of debentures is quite different.

Mr. GELBER: What is the reason?

Mr. HUMPHRYS: There is a different problem there. The earnings test for debentures is based upon the earnings of the company in relation to the annual interest requirements on its outstanding debt. Therefore, what we are measuring for debentures is the ability of the company to meet the interest requirements on its debentures; whereas for common shares what we are trying to measure is the ability of the company to continue to pay dividends to its shareholders. I think the two problems are substantially different.

Mr. GRAY: I have a further point, one which I think is a point of order.

I have been following the discussion here and I have been wondering whether we may not inadvertently be leaving the order of business set down by the steering committee. At this point I understood the time should be devoted to getting explanations of the proposed amendments without particular reference to the suitability or otherwise of these amendments, and that more detailed discussion of policy implications would follow on the debate of the clause. Perhaps my own question raises a matter of interpretation. At the rate we are going, unless there is a lot of repetition in the clauses which will render it unnecessary to discuss them, I think it will be quite a while before we reach the preliminary stage.

The CHAIRMAN: I thought we would make this particular section a little more intelligent if we did relate it to clauses that are to come. It is my understanding that there is considerable repetition in regard to the loans and trust sections, when these things will all fall into place.

It was my hope that by pausing here and clearing up this point we would really gain time later on, Mr. Gray. That is why I had not intervened at all. I was hopeful that this would accomplish something and assist us to deal more expeditiously with the bill.

I now turn to Mr. Moreau.

Mr. MOREAU: I was interested in the answer you gave, Mr. Humphrys, to Mr. Munro pertaining to the percentage of assets of insurance companies in common stocks and the percentage in Canadian stocks. I put a question on the order paper last session, and though I do not have the answer before me now my recollection is that the total investment by Canadian life insurance companies was about 4½ per cent of their assets in common stocks, and about one quarter of that or approximately 1½ per cent was in Canadian stocks. You now say it is almost half, and I wonder if the picture has actually changed that much in this short a time.

Mr. HUMPHRYS: It is less than half. I am asking Mr. Patterson to calculate it.

The CHAIRMAN: While that is being calculated we can go on to another question.

Mr. MOREAU: My other point relates back to a point which Mr. Gelber partially made.

With respect to a subsidiary of a foreign controlled company which had not been paying dividends and which wanted to take advantage, say, of the withholding tax provisions or, for political considerations, wanted to put out stocks in Canada, would you not feel that the amendments to the qualifications of stocks here would allow at least access to the investment pool held by the insurance companies. In other words, their stocks could qualify under the new provisions where they could not before.

Mr. HUMPHRYS: That is correct, if they have an adequate earnings record.

Mr. MOREAU: Would you not feel that this could perhaps be quite an important consideration? We have heard a great number of arguments to the effect that even if the stocks were made available in Canada there would not be sufficient capital available to take them up. We have had a great deal of discussion on the small percentage of investment of perhaps the largest investment pool in the country, and some of the reasons why that investment pool could not be used. I was thinking the argument might be applied to the Union Carbide issue when they brought out their stocks; and it turned out that there was sufficient money available to take all the stock issued. But perhaps if we had a rash of these things it might be very important to have these amendments in the act. I just wonder what your views would be on that.

Mr. HUMPHRYS: I believe that broadening the eligibility in this way and making shares of the type you described eligible investments for insurance companies will considerably increase the market for them in Canada.

The actual volume that will be taken up by the insurance companies will depend, of course, upon the particular company and the price of the shares, and other considerations. I believe broadening the eligibility in this way will definitely stimulate the market for them.

Mr. MOREAU: Can you tell me whether Union Carbide in their subsidiary occupation had a dividend record?

The follow up question is, what percentage of the Carbide issue was taken up by insurance company investment?

Mr. HUMPHRYS: I have no information on the percentage of the issue taken up by insurance companies, but I do believe they have made substantial investments in it.

Mr. MOREAU: In other words, the subsidiary did have a dividend record and therefore qualified? Or would it be done under the basket provisions?

Mr. HUMPHRYS: I could look into that. I do not know offhand. If they have made investments and they did not have the required dividend record, they have clearly been making them under the basket provision. I think the prospect of an amendment of this type may have had some influence also.

Mr. MOREAU: My first question was concerned with a change in the investment pattern since a year ago. I think really there is some significance in that. If the ratio in these was, as I recall from last year, about one third and it has now risen to almost one half, I think it may already indicate a considerable change in the pattern of investment by the insurance companies, and I just wonder if we could not obtain those figures.

Mr. HUMPHRYS: Mr. Patterson has calculated the figures from our report at the end of the year, and his figures show a little higher than one third now, not as much as one half.

The CHAIRMAN: I do not want to cut you off, but we have had quite broad questioning and explanations given by Mr. Humphrys. Perhaps we can now go back to the clauses and to the explanations without necessarily going into all the reasoning.

Mr. HUMPHRYS: We have dealt with subclause (4) which has to do with debentures, and established the eligibility by a cross reference. Subclause (5) paragraph (ja) effects an amendment with respect to guaranteed investment certificates for the same purpose as was just described for debentures. Paragraph (k) which is an amendment related to preferred shares is also for the same purpose; that is to establish the qualification in part by cross reference to common shares.

Paragraph (l) at the top of page 10 is the paragraph dealing with common shares. It effects two changes; the first is to reduce the present seven year dividend record requirement to five years and to enact the proposed earnings test that we have been discussing.

The amendments will also effect a number of less important changes. The first is that at present an insurance company is limited to investing in not more than 30 per cent of the total issues of shares of any corporation. That includes both common shares and preferred shares. This amendment will remove preferred shares from that limitation and retain only the limit of a maximum of 30 per cent of the common shares of any corporation.

Mr. GELBER: Could we have an explanation of that change? Why was it felt necessary?

Mr. HUMPHRYS: It was not considered necessary to impose a limit on the investments in preferred shares of any particular company since they are a different character of investment from common shares. The purpose of the limitation is essentially to prevent an insurance company from buying enough shares in a particular corporation to exercise a controlling interest, and this relates to common shares rather than to preferred shares.

Mr. GELBER: Actually, 30 per cent is a rather high percentage. By removing the restriction of preferred shares I wonder if you are not opening the door for trust company management to take too large an interest in companies in which some of their directors are concerned.

In a lot of the mutual funds the limitation of investment of mutual shares in any one company is very often 5 per cent of the total issue of that company. It seems to me that 30 per cent is a very high percentage. I do not see the reason for the removal of preferred shares from the restriction.

Mr. HUMPHRYS: The 30 per cent has been in the act for a long time and no change in that figure is proposed here. The removal of preferred shares from that limitation would enable the companies to invest in preferred shares on the same terms as they may invest in debentures of the corporation or bonds without any specific limit in the act. Under the present existing legislation, if they wished to do so they could of course buy 30 per cent of the common shares by not buying any of the preferred.

Mr. BASFORD: What is the criterion for common shares in the United States?

Mr. HUMPHRYS: It varies quite widely from one state to another, Mr. Basford. The United States insurance companies have not in practice been very heavy investors in common shares. Some of the principal states have not until recent years permitted the life insurance companies to buy common shares at

all. That is changing somewhat. I have no data with me that would permit me to answer your question directly, but I could get limits for some of these principal states if you wish to have that information.

Mr. BASFORD: Yes, I would appreciate that. I take it you would not be in a position to answer the same question with regard to the United Kingdom.

Mr. HUMPHRYS: There are no such limitations or restrictions in the United Kingdom. In the United Kingdom, companies may invest completely at their own discretion.

Mr. BASFORD: In any common stocks?

Mr. HUMPHRYS: They may invest in any stocks of any type.

Mr. BASFORD: Why is the legislation in the United Kingdom so different from ours? You have said that the purpose of these restrictions is to protect the policyholders. I am sure the people of the United Kingdom have the same desire. How do they express it?

Mr. HUMPHRYS: Your question can only be answered on an historical basis. The insurance companies had a very early start in England and they grew up over 200 or 300 years. They had their share of failures and troubles over the years when the industry was growing and being formed. At the present time they have reached a state of financial strength and stability that enables them to operate apparently in a manner that is satisfactory to the authorities over there.

In this country and in the United States the pattern was different. Almost from the earliest times of insurance there was a much more formal pattern of supervision established in this country and in the United States. I think in part it may have developed in that way because in the early experience of this country most of the insurance was effected by companies from other countries, and there would be a tendency to establish a more elaborate pattern of supervision to protect Canadian policyholders when the business was being done by non-resident companies.

We have been influenced probably to some extent by the pattern of legislative supervision in the United States, I think, and as in so many cases we find the position in Canada to be somewhat between that of the United States and that of the United Kingdom.

Our governing restrictions are not as rigid or elaborate as they are in the United States; on the other hand, they are somewhat more elaborate than in the United Kingdom. I think, among other things, the justification for the pattern of supervision that we have in Canada is that we have not had failures or losses to policyholders from life insurance companies failing. You will note this is not the case, if you look at the history of the development of insurance in the United Kingdom. I admit it has been the case over there in recent years that they have not had troubles of this kind for a great many years. However, in the history of the development of the insurance industry in that country there were a good many difficulties and failures.

Mr. BASFORD: Well, it would appear from the United Kingdom example that it is possible to run an insurance system without these earnings.

Mr. HUMPHRYS: Do you mean without the investment restrictions?

Mr. BASFORD: Yes.

Mr. HUMPHRYS: Yes.

Mr. BASFORD: Then, I take it this matter of the investment restrictions is not the sacred cow which we think it is.

The CHAIRMAN: I do not think I should ask one of the officials to comment upon your question.

Mr. BASFORD: I would like to revert to the 44 companies that are being added to the appropriate list of common stockholdings. Is there any characteristic about these additions? Are we allowing insurance companies to invest in any branch of our economy in which they were not previously investing?

Mr. HUMPHRYS: I have not that information.

Mr. BASFORD: Is it possible to have a list of these companies?

Mr. HUMPHRYS: I can make inquiries. The information that I gave to you this morning was provided to us by the investment departments of some of the life insurance companies. I can go back and ask whether or not they can list the companies for me.

Mr. BASFORD: Thank you very much.

The CHAIRMAN: Mr. Humphrys, would you now carry on with the act.

Mr. HUMPHRYS: Paragraph (1) also makes some cross references to subsequent sections where the limitations on investment in common shares are otherwise modified. We will come to those sections as we go through the bill.

Paragraph (m), starting at line 29 at page 10—

Mr. GELBER: If I may interrupt, I have a question in regard to subsection (v). I am told one of the reasons that some of our smaller companies have been purchased and controlled abroad is that this restriction does not allow insurance companies to buy shares of other insurance companies. They are the most likely purchasers, as you know, and in view of this restriction companies who have experience in this field move in and control foreign companies because our own people are restricted. In point of fact, we are encouraging the export of control of insurance companies by this type of restriction. Am I not correct in this assumption?

Mr. HUMPHRYS: One of the amendments proposed later in the bill, to which a cross reference is made, will enable the Canadian life insurance companies to purchase the shares of another Canadian life insurance company with a view to eventually merging the operations of the two companies. It has long been considered that there is no reasonable justification for permitting a Canadian life insurance company to own and operate a subsidiary life insurance company in the same market. However, they have had for a long time the power to merge or amalgamate with other Canadian companies. This new power that will be proposed in a subsequent amendment will enable them to purchase the shares of an existing company with a view to eventual amalgamation of the two companies.

Mr. GELBER: They would have to purchase control.

Mr. HUMPHRYS: Yes.

Mr. GELBER: And although that control may not be available, yet a substantial block of shares might be available and the interest in the Canadian company might be piecemeal because of this restriction.

Mr. HUMPHRYS: Well, under the provisions that were proposed earlier in this bill there will be limitations on the proportion of shares that can be acquired by non-residents so I think the piecemeal sale to foreign interests will not be possible under this amendment.

Mr. GELBER: But, under other sections of the act.

Mr. HUMPHRYS: Under the provisions we discussed earlier in respect of the proportion of shares that could be owned by non-residents.

Mr. WAHN: I have a question along the same line. What is the reason why a life insurance company is not permitted to buy the shares of another life insurance company in a case where it is not with a view to merger or would not amount to control. I believe the witness said the reason was there was no point in allowing a life insurance company to have a subsidiary life company

in the same market. But, suppose it wants to buy a number of shares of another life company which does not amount to control, so that the other company does not become a subsidiary. In this case the reason given by you does not apply in that event. Why should not one life company buy shares of another life company as an investment?

Mr. HUMPHRYS: Well, the prohibition against one company of this type buying shares in another runs through the Insurance Companies Act, the Loan Companies Act, the Trust Companies Act and so on, and it has been considered inappropriate and undesirable for one company to buy shares in another which, in effect, is its competitor in the same market. It is not necessary as an investment because they are in the life insurance business already and to participate in the life insurance business it is not necessary or really reasonable for them to take a share in another company that is in the same activity; the same reasoning follows in respect of other companies of a corresponding character.

The CHAIRMAN: Are there any further questions.

Mr. WAHN: I do not think the reason given is entirely satisfactory, but if that is the reason I suppose there is nothing one can say. My point is this. Very often acquisition of control takes place over an extended period. You can think of many cases in Canadian history where one company, desirous of acquiring control of another company, has not been able to do it as a result of one transaction but it has picked up a large block of control, which does not amount to complete control, and ten years later they get another block of shares, and eventually it has obtained sufficient shares to acquire control. There is nothing necessarily wrong with this process but, I gather, this is not permitted under the present act, even though in other fields in Canada this is a recognized way of integrating the operations of companies, sometimes with desirable economic results and, no doubt, at other times with undesirable economic results. But, as I understand it, this is prohibited under this legislation, and nothing further can be done about it.

Mr. HUMPHRYS: It is prohibited, and all through the years these companies, each incorporated by special act of parliament for the purpose of doing an insurance business or whatever business they have power to do, have been prohibited from buying shares of other similar companies. In the first place, it would not be necessary for the carrying out of the essential business of the company; it might create conflicts of interest in that the investing company would have an interest in its competitor. It would create complications in attempting to assess the financial position of the companies concerned and, generally, it is not at all necessary to enable the company to carry out its objectives. If it were attempted with a view to eventually gaining control, the process of investment might start but there would be no assurance it would ever reach a position of control or amalgamation, and you would have a complexity of investment patterns and an interlocking of companies which would be inappropriate and unnecessary to the carrying out of the objectives of the particular company concerned.

The CHAIRMAN: Mr. Humphrys, would you now continue clause by clause.

Mr. HUMPHRYS: I am referring now to paragraph (n), starting at line 29 on page 10, which deals with the power of insurance companies to invest in real estate mortgages. There are two changes. The first would increase the limit on a mortgage that may be purchased, from two thirds of the value of the real estate to a mortgage representing three quarters of the value of the real estate. The other change would be to enable the company to invest in mortgages on leaseholds in Canada. Now, that change in respect of leaseholds is merely to bring the investing provision into line with the lending provision. Companies now have the power to lend on the security of mortgages

on leasehold property, so the change merely brings the investment provision into line with the lending provision. The important change here is the increase in the limit from two thirds of the value of the real estate to three quarters.

Mr. MUNRO: In looking at this clause strictly from the aspect of this question of foreign ownership and control, what effect would it have?

Mr. HUMPHRYS: I do not think it would have any effect on that aspect.

Mr. MUNRO: In other words, the previous provisions in no way limited insurance companies in the past from participating in any takeovers with, say, a similar type of investment capital from abroad.

Mr. HUMPHRYS: I am sorry, but I did not understand your question. Does your question relate to paragraph (l)?

Mr. MUNRO: No, I am referring to this business of raising the percentage in respect of mortgages, and perhaps it has no relationship to the paragraph we are discussing. I was just wondering about it.

The CHAIRMAN: I do not think you are directly on the clause, Mr. Munro, although I may have misunderstood you.

Mr. HUMPHRYS: This clause will enable companies to buy mortgages that represent a higher limit in respect of the real estate than they could formerly, so it broadens their power to invest in mortgages.

Mr. MUNRO: And it is not anticipated this would have any bearing one way or another so far as foreign ownership and control are concerned?

Mr. HUMPHRYS: I cannot see it.

Mr. MUNRO: That was not one of the motivating designs?

Mr. HUMPHRYS: No.

Mr. BASFORD: Why were leaseholds excluded in the first place?

Mr. HUMPHRYS: I think at one time the mortgage investing powers were limited to freehold real estate as being a more secure type of investment. Then, as leaseholds became more common power was given to lend on the security of mortgages on leaseholds, but I think probably owing to an oversight as much as anything else that leasehold provision was not inserted in this paragraph which deals with investment in mortgages; it is in the provision dealing with lending on the security of mortgages.

Subclause 6 deals with investment in real estate for the production of income. This enables the companies to invest in real estate for the production of income where the real estate has been leased on a long term lease to a corporation that has a dividend record sufficient to enable its common shares to qualify as investment. The change proposed here would enable companies to invest in income real estate where the real estate has been leased to a government or government agency as well as to a corporation with a prescribed dividend record. It also broadens the range of partners with which an assurance company may join in such an investment. Some of these are very large and sometimes companies join together to make a joint investment. It would also enable companies to invest in larger individual parcels of real estate. At present, they may not invest in a parcel in excess of one per cent of their assets. This would enable them to buy any other parcel up to 2 per cent of their assets. I may say that this is one of the places where an amendment has been proposed. As the bill is drawn, it would enable a company to invest in real estate leased to a government or government agency, limited to a national, provincial or state government. The proposed amendment would include a municipal government.

Mr. MACKASEY: Mr. Chairman, we have a labour meeting which is rather urgent.

The CHAIRMAN: It is obvious to me there is pressing business elsewhere for many of our members. I had anticipated that on Thursday we might hear the views of the trust companies, and Mr. Nelson is with us today. It is obvious we will not be able to reach you, Mr. Nelson.

We will return on Thursday at which time I hope we can continue on until 12.30 p.m. and complete the explanation of the act by Mr. Humphrys. Mr. Robinette will be appearing on Tuesday of next week to make representations on behalf of the World Mortgage Corporation, and Mr. Nelson will be here on Thursday of next week at 10 o'clock.

The meeting is adjourned until Thursday at 10 o'clock in this room.

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HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament

1964

STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

(THURSDAY, NOVEMBER 5, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESS:

(Mr. Richard Humphrys, Superintendent of Insurance.)

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Addison	Flemming (<i>Victoria-</i>	McCutcheon
Aiken	<i>Carleton</i>)	McLean (<i>Charlotte</i>)
Armstrong	Gelber	Monteith
Asselin (<i>Notre-Dame-de-</i>	Grafftey	More
<i>Grâce</i>)	Gray	Moreau
Basford	Grégoire	Munro
Bell	Greene	Nowlan
Berger	Hales	Nugent
Blouin	Jewett (<i>Miss</i>)	Otto
Cameron (<i>High Park</i>)	Jones (<i>Mrs.</i>)	Pascoe
Cameron (<i>Nanaimo-</i>	Kindt	Rynard
<i>Cowichan-The Islands</i>)	Klein	Scott
Caouette	Lambert	Tardif
Chrétien	*Leblanc	Thomas
Côté (<i>Chicoutimi</i>)	Lloyd	Vincent
Douglas	Macaluso	Wahn
Frenette	Mackasey	Whelan
		Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Addison on November 3.

ORDER OF REFERENCE

TUESDAY, November 3, 1964.

Ordered,—That the name of Mr. Leblanc be substituted for that of Mr. Addison on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, November 5, 1964.

(11)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Gelber Gendron, Kindt, Klein, Lambert, McCutcheon, Moreau, Munro, Pascoe, Pennell, Rynard, Thomas, Wahn and Whelan—(16).

In attendance: Mr. Richard Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill S-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of subclauses 6 to 9 inclusive of Clause 5 and was questioned. The clause was permitted to stand.

The witness explained Clause 6, was questioned and the clause was permitted to stand.

Mr. Humphrys explained the purposes of Clauses 7 to 12 inclusive, and the clauses were allowed to stand.

On motion of Mr. Moreau, seconded by Mr. Lambert,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill C-123.

At 12.15 p.m. the Committee adjourned until 10.00 a.m. on Tuesday, November 10, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, November 5, 1964.

The CHAIRMAN: Gentlemen, we now have a quorum. I call the committee to order.

Yesterday, Mr. Humphrys was giving us an explanation of the proposed amendments and, if my memory serves me correctly, I believe we were on paragraph (o) of subclause 6 at the bottom of page 10.

You might proceed, Mr. Humphrys, with paragraph (o) at the top of page 11.

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Paragraph (o) deals with the power to invest in real estate or leaseholds for the production of income. At present companies can make investments of this type where the real estate is leased to a corporation on a long term lease and the corporation has the financial standing such that its preferred or common shares are authorized investments.

This amendment would make it possible for companies to invest in this type of real estate where the lease is to a government or government agency. In the amendment as placed before you, the governments referred to are national, state or provincial governments. Since this bill was introduced, the industry has asked whether an amendment could be made to include municipal governments also in that section. That is one of the proposed amendments to the bill that has been tabled.

The other changes in this paragraph would expand slightly the range of partners with which a company may join in making these investments. Some of these investments are very large, and in some cases several companies join together to make investments. Hitherto they have been able to join only with other Canadian insurance companies registered under this act, and loan companies and trust companies incorporated in Canada. This will enable them to join with any other insurance companies doing business in Canada.

The amendment also increases the size of the individual parcel of real estate which may be purchased from one per cent of the company's assets to 2 per cent.

Mr. RYNARD: This is not quite clear in my mind:

The amendment would also prevent a company registered to transact life insurance from investing any of its funds in the shares of life insurance companies except as provided in the new section 64A and in section 90—

No insurance company could do business without having a licence to do it, so I do not see the point in this. Any company which would be doing business in the life insurance world would have to obtain a licence to do it and would have to be incorporated.

Mr. HUMPHRYS: The company must have a certificate of registration to carry on business; that is correct.

Mr. RYNARD: Then why is this applicable to it?

Mr. LAMBERT: Dr. Rynard is referring back to paragraph (1).

Mr. HUMPHRYS: Is that the subparagraph on the middle of page 10?

Mr. RYNARD: Yes.

Mr. HUMPHRYS: "—a company transacting the business of life insurance." That is to prevent one life insurance company buying shares of another.

Mr. RYNARD: But it also goes on to state:

The amendment would also prevent a company registered to transact life insurance from investing any of its funds in the shares of life insurance companies—

Mr. HUMPHRYS: Yes. That is to prevent one life insurance company buying shares of common stock in another.

Mr. RYNARD: In other words, to prevent one company buying up another?

Mr. HUMPHRYS: Except in the circumstances described in the two sections to which a cross reference is made.

Mr. RYNARD: But no life insurance company could buy up another?

Mr. HUMPHRYS: That is right, except in the circumstances set forth in these two sections.

Mr. RYNARD: Might we have those two sections in order to clear it up?

The CHAIRMAN: You might give a brief explanation.

Mr. HUMPHRYS: Section 64A will enable a Canadian life insurance company to buy shares of another life insurance company transacting business outside of Canada. They could, therefore, under that provision own subsidiaries in foreign fields. The provision in section 90 will enable a life insurance company to purchase a controlling interest in the shares of another life insurance company leading to a merger or amalgamation of the two companies.

The CHAIRMAN: Does that temporarily satisfy you?

Mr. RYNARD: Yes.

Mr. LAMBERT: What about a life insurance company which gets into a real estate promotional proposition with a realty firm which it controls and thereby circumvents some of the provisions. Suppose it is dealing with a captive real estate firm in investment in a real property, as is now being envisaged by the amendments, and I am putting aside the participation with other life insurance companies. Two of them might get in with captive real estate firms. Is this not endangering the structure of our life insurance companies and the, shall we say, requirements for solid reserves?

Mr. HUMPHRYS: I will answer the question in two parts. First, this paragraph deals only with investment in real estate for the production of income and the real estate must be leased to a government or to a corporation with a good financial record. The leasing must be in terms that will provide for the repayment of at least 85 per cent of the purchase price over the term of the lease, not exceeding 30 years, and also must provide for a reasonable rate of return to the company. Therefore, under this provision it would not be possible for them to make the type of investment you have visualized.

However, when we get to section 64A, there is a proposal there that life insurance companies be empowered to invest in real estate subsidiaries, notwithstanding certain other investment provisions, by buying common shares. So, the question you raise is quite relevant. This proposed amendment would enable them to obtain an equity interest in a real estate subsidiary.

Mr. LAMBERT: I think it is tied in, but I am thinking of some developments taking place in Ottawa at the present time where there are major buildings being put up on the basis of a long term lease to the federal government. I do not know where the financing is coming from. I rather suspect the insurance companies may be in on this, because after all they are rather lucrative lease agreements. Since these proposals will be a parallel in respect of trust com-

panies and other life insurance companies, what I am concerned with is that they will be able to invest money in real estate firms which firms would be the nominal developers, and where in actual fact they will be able to circumvent the 2 per cent limit by reason of the fact that, having an investment in a realty firm, they could put it under that head and yet come in under the head of investment in real property.

Mr. HUMPHRYS: The investments under this paragraph would have to be by way of direct ownership of the real estate. The proposal in section 64A is to enable them to own a real estate subsidiary; they cannot do it now, because they are limited to a maximum of 30 per cent of shares of any one corporation. So, they could not obtain a controlling interest; but under the proposal they would be enabled to obtain a controlling interest in a subsidiary. The proposal is that power to obtain a controlling interest in a real estate subsidiary would be subject to such terms and conditions as prescribed by the treasury board on the recommendation of the superintendent of insurance.

The intention is that the treasury board would lay down provisions that would establish some degree of supervision over the extent to which they could invest their funds in this way. Further, any such investment would have to be by way of purchase of the shares—ownership of the shares of the subsidiary—and they would come within the limitation on the ownership of shares.

Mr. LAMBERT: As superintendent of insurance you are satisfied this will not weaken, shall we say, the stability of our life insurance company structure?

Mr. HUMPHRYS: It represents a considerable broadening in their power. There is no question but that investment on an equity basis in real estate carries with it a greater degree of risk than some other types of investments. However, I, as superintendent, believe that we will be able to lay down terms and conditions and establish a degree of supervision over it such that the safety of policyholders will not be endangered thereby.

Mr. THOMAS: Do we understand that the previous provision in the act permitted life insurance companies to invest in mortgages to the extent of two thirds of the value of real estate?

Mr. HUMPHRYS: Yes.

Mr. THOMAS: No, this amendment provides they can invest up to three quarters or 75 per cent of the value of the real estate?

Mr. HUMPHRYS: There is an amendment to that effect.

Mr. THOMAS: Is it limited to that; is the amendment limited to that concept of just increasing the ability to invest from two thirds of the value in real estate to three quarters, or are there other broadening powers incorporated in this amendment?

Mr. HUMPHRYS: The specific amendment dealing with the power of the companies to invest in mortgages and real estate does two things; it enables them to invest in mortgages up to a limit of 75 per cent of the value of the real estate instead of two thirds, and it would also enable them to invest in a mortgage on leasehold property as well as on freeholding property; that refers to the specific amendment dealing with the power to invest in real estate mortgages. In this clause there are a number of other amendments to the investment powers, all of which are in the direction of broadening those powers.

Mr. THOMAS: Are there any restrictions on the amount of the total invested funds of a company which may be invested in real estate mortgages?

Mr. HUMPHRYS: No.

Mr. THOMAS: In other words, if they have X dollars to invest they can invest 100 per cent of it in real estate mortgages?

Mr. HUMPHRYS: So far as the legislative provisions are concerned, yes.

Mr. McCUTCHEON: I am not legally trained and things have to be practical in order to get through to my understanding of this, Mr. Humphrys. May I pose a question in this manner? Land assembly in a large metropolitan area has been undertaken in the past by speculators and real estate promoters, and the only thing that life companies have been able to do, after the profit has been made by the investors or speculators, has been to lend out the policyholders' funds at a nominal interest rate as mortgages on the development of this. Do I take it that now the life companies would be able to go into the land assembly business and get in on the so-called gravy train that there has been in that field over the past many years?

Mr. HUMPHRYS: The amendment that would enable life insurance companies to own real estate subsidiaries has been requested by the industry as a result of their desire to participate on an equity basis in some of these real estate developments. As the matter has been placed before us, the circumstances are much as you have described them. They have been able to participate by way of a mortgage loan, but not by way of equity. The amendment enabling them to own real estate subsidiaries would enable them to participate on an equity basis with the profits if the result is successful and the losses if it is not.

Mr. McCUTCHEON: Thank you.

Mr. AIKEN: Mr. Humphrys, I would like to come back to a question raised by Dr. Rynard concerning the power of Canadian life companies to hold stock in life companies outside Canada. I would like to ask whether there is a double standard situation in this bill in that a Canadian life company is not restricted in holding stock in a foreign life company but a foreign company is restricted in its holdings in Canadian life companies. Is this a fair statement? I am not arguing the merits or demerits at the moment, because that will be my next question.

Mr. HUMPHRYS: I think the question refers in part back to the proposed amendment dealing with limitations on non-resident ownership of shares of Canadian life insurance companies.

Mr. AIKEN: Yes.

Mr. HUMPHRYS: Well—

Mr. AIKEN: I am referring particularly to the subsection we are on now, 64A.

Mr. HUMPHRYS: The limits on non-resident ownership of shares of Canadian life insurance companies would apply to existing companies that are now under Canadian control, but those provisions would not prevent foreign interests coming into Canada and incorporating a Canadian company, capitalized by non-residents from the outset, if parliament or the provincial legislatures saw fit to grant the incorporation. So, the way still is open for non-residents to form a Canadian company so far as these provisions are concerned. It is proposed that Canadian life insurance companies be empowered to own subsidiaries outside Canada; this would be a parallel power. They could incorporate a subsidiary in foreign fields if the foreign jurisdiction would let them. Whether or not they could buy an existing company in a foreign jurisdiction would depend upon the laws in that jurisdiction.

The reason the industry has requested this amendment is that Canadian life insurance companies have long done a large volume of business outside Canada. The industry has felt for some time there would be certain advantages if they could do that through a subsidiary company rather than through a branch of the existing company. There is a fairly strong trend throughout the world, particularly in the international operation of insurance, in the direction

of operating through locally incorporated companies, rather than through branches of the parent company as traditionally has been the case.

I believe this power to own foreign subsidiaries will be used to form foreign subsidiaries rather than to buy existing ones, although I must admit it is not restricted.

Mr. AIKEN: Therefore, a Canadian life company could acquire stock in an existing foreign company?

Mr. HUMPHRYS: So far as this legislation is concerned, yes.

Mr. AIKEN: There is another thing I was not aware of until you stated it. This legislation only prevents the sale of existing Canadian life companies and does not prevent the incorporation of foreign-owned Canadian life companies?

Mr. HUMPHRYS: That is correct.

Mr. LAMBERT: I have a supplementary question. You have control over these operations of the Canadian companies, but now, with the amendments proposed whereby they may be able to operate a subsidiary in the foreign field, what control will you have over the subsidiary in its real estate operations; in other words, you control the main body, but it is connected to a subsidiary body over which you have no control. If that is in a bag of rice with a hole in it, then I am afraid the control would be lost. Do you propose to control life insurance companies in their real estate operations on a consolidated basis, or to merely compartmentize it in so far as the Canadian company and its operations in Canada are concerned?

Mr. HUMPHRYS: Regarding the ownership of a subsidiary life insurance company in a foreign field, we propose to work out provisions and have the treasury board lay down terms and conditions that will be designed to protect the Canadian policyholders in the sense of putting some limit on the extent to which the company can put money into the foreign subsidiary. The conditions would be designed to lay down rules and regulations in respect of the valuation of the shares of the subsidiary as they might appear as an asset in the statement of the Canadian company. Also, we would want to have access to the financial statements of the subsidiary and to exercise a degree of control at least sufficient to protect the reputation of Canada and Canadian insurance. But, beyond that, the responsibility for regulating the operations of the subsidiary would be very largely in the hands of the local jurisdiction because the subsidiary would be selling insurance policies to residents of that jurisdiction. It would be up to the local authorities to determine the extent of the regulation they wanted to impose on a company operating within their jurisdiction. The fact is that most of the business done now by Canadian life insurance companies outside of Canada is in the United States or in the United Kingdom. In the United States there are quite rigid restrictions in each state on the operations of insurance companies, and I think subsidiaries formed in the United States probably would be under tighter restrictions legislatively than the companies are in Canada.

Mr. AIKEN: Mr. Chairman, that answers the question I was raising.

Mr. HUMPHRYS: Formerly, Canadian companies did a very large business throughout the world but the trend since the war has been very much in the direction of withdrawing from countries in the far east, middle east and central America, and really their foreign business has been very largely restricted now to the United Kingdom, the United States and the West Indies.

The CHAIRMAN: Would you proceed Mr Kindt.

Mr. KINDT: I note the new provisions increase from 62½ per cent of the present value of the real estate up to 75 per cent of the value of the real estate, as you have said. But, I am troubled a little bit in respect of the word "value"

because it has, as you know, several meanings. I am wondering if the meaning has been nailed down here. It could mean, as you know, the appraised value, the purchase value, the resale value, or value for use. In my opinion, the word 'value' has to be nailed down. Could you tell me where it is nailed down?

Mr. HUMPHRYS: Well, it is not defined specifically. It is taken to be the market value of the real estate. The practice is for companies to determine their own appraised value and make their loans accordingly. The department inspects their mortgage loans; it looks at the value, and it is able to check it from a record of properties that may have been sold, or like properties. In this manner it is possible to exercise some degree of supervision in order to see to it that the value being used for purposes of this provision is a reasonable estimate of the market value at the time the loan is made.

Mr. KINDT: There is certainly a wide variation in market values, as you know, and any one company may appraise the real estate at a certain market value. In that event, how could the government come along and make sure that they are conforming to the provision of the act if in making the appraisal of the value the government comes out at a different point from the company. Who is right?

Mr. HUMPHRYS: Admittedly, there is an area of opinion in determining the market value of a piece of real estate. We can exercise some supervision by comparing the appraised values with sale prices where the property has been sold, perhaps after the mortgage has been made or where similar properties have been sold. But, where a dispute arises and a real difference of opinion occurs as to the value of the property we would call for an appraisal by an independent appraiser, and be guided by the results of that. I think that is as objective an approach to the value of real estate as can be taken. Of course, the real measure of the value is the sale price of a similar property that has been sold.

Mr. KINDT: But I still cannot see how your authority can be exercised against these companies.

Mr. HUMPHRYS: We could call for an independent appraisal.

Mr. KINDT: Yes, but at the time you made your appraisal changes could have taken place and the person who made the appraisal would not come out at the same point as he would if he made the appraisal at the time the companies made it.

Mr. HUMPHRYS: Well, it is true that the values differ, but the extent of a difference of an opinion that might be based on a short time period would not be such as to constitute a serious difference in the value. If it were a very large difference then the company would be required to dispose of the loan—that is, sell it, or it would be disallowed as an asset in their statement.

Mr. KINDT: But serious complications might result by requiring an insurance company to dispose of it right at the time when things were not favourable for a disposition. I am thinking of your authority over companies in respect of the meaning of the word "value". Now, I suspect because of the way insurance companies operate in respect of investments they would stay under the figure of 75 per cent instead of going right up to the 75 per cent. In other words, they would keep it down to around, say, 50 per cent or perhaps 60 per cent as a maximum of real estate values. And, it may not even be that high. Perhaps that would take care of itself. But, if it came to a showdown between you and the company I do not think you would have a leg to stand on under the present provisions in respect of the meaning of the word "value".

Mr. HUMPHRYS: We could call for an independent appraisal. The problem has not been a serious one in actual practice.

Mr. KINDT: But the reason it has not been a serious one in actual practice is that you are now getting into the question of life insurance companies going into the real estate field which, to a large extent, was not the case before. But it is being opened up. Therefore, the problem certainly will become more acute now than it has been in the past.

Mr. HUMPHRYS: I would have thought, sir, that the problem probably would be less acute if the limit is raised from two thirds to 75 per cent. At the present time, when the limit is two thirds and other companies are lending at a higher ratio, and perhaps picking off the more desirable mortgages because they can lend at a higher ratio, there is, I think, quite a strong pressure perhaps to increase appraisal values in order to be able to lend a competitive amount. In raising the mortgages from two thirds to 75 per cent I think you are more likely to get a realistic figure because they then can compete on more even terms with other companies. Some of the United States and British companies operating in Canada can lend at a higher ratio than the two thirds.

The CHAIRMAN: Would you proceed now, Mr. Rynard.

Mr. RYNARD: Mr. Chairman, some of my questions have been answered. However, I would like to ask what percentage of insurance funds will be allowed to go into the mortgage business and into the building business in respect of real estate.

Mr. HUMPHRYS: There is no limit on the portion of a company's fund that may be invested in mortgages. So far as real estate is concerned, under the present law companies are limited to investing a maximum of 10 per cent of their assets in real estate for the production of income. That is the type of real estate that is described in paragraph (o), the so-called "leaseback" real estate, where the property is leased on a long term basis.

Mr. RYNARD: That is, the insurance companies erect the buildings?

Mr. HUMPHRYS: They own the buildings. The proposed amendment would remove the limitation on leaseback real estate because that has proved to be an excellent investment. This has had a very good record, and the requirement that it must be leased on a long term basis to a corporation whose shares are eligible investments means that it is almost as secure as a debenture of the corporation. So, it is proposed in these amendments to remove this type of real estate from the 10 per cent limit.

But in paragraph (p) on this same page it is proposed to enable companies to invest in another type of real estate and that type together with investments in real estate made under the basket provision would be limited to a maximum of 10 per cent of the company's assets.

Mr. RYNARD: I am wondering about this. If they are getting into this and increasing their real estate holdings I suppose you could get a downward trend in this respect. If that is the case, are you going to get into trouble or are you going to stop them before it goes that far? Are you actually going to hold this down and not let them get into the problem where you could get a little downward trend in real estate holdings. We have seen this happen, and the past history of life insurance companies demonstrates that such has been the case. I am just wondering whether you are going to keep a control on this in order not to allow this situation to develop.

Mr. HUMPHRYS: Well, the control in law is limiting companies to investing not more than 10 per cent of their assets in real estate for the production of income, other than this leaseback type which is, as I have said, a very secure investment and partakes more of a debenture type than a real estate type. So, there will be a limit of 10 per cent so far as investment in real estate for the production of income is concerned. With regard to real estate companies, this will be an investment in common shares and will come under the limit of

25 per cent on investment in common shares. Those two are the extent of the legislative limits. Now, I do not think it is possible to legislate investment wisdom into the minds of the investment managers in the company nor is it possible for the insurance department to be all-wise in this area. So, I think all I can say, in answer to your question, is that in accordance with our normal practice we would keep very closely in touch with the investments that are being made by companies. If we felt that a danger area was being reached we certainly would enter into discussions with the companies to try to air the matter and to see where the best course lies. But, we are not in a position to substitute our investment judgment as an insurance department or as government officials for the investment judgment of the company officials. Within the limitations of the law they may exercise their discretion and our power would be limited to persuading.

Mr. RYNARD: Of course, you would be controlling their licence.

Mr. HUMPHRYS: Yes, their certificate of registry comes up for renewal every year and the minister may impose such conditions as he wishes in the certificate.

Mr. RYNARD: So this really is your safeguard.

Mr. HUMPHRYS: In a serious situation this would be the ultimate safeguard, yes.

Mr. RYNARD: When they are making investments and arriving at the point which you regard as critical is there anything in the regulations in respect of these companies going further with these investments? You do keep this check on them?

Mr. HUMPHRYS: Well, they file statements with us twice a year indicating the new investments they have made in the half year, and every year they file an elaborate statement with us showing complete details of their financial conditions and affairs together with a complete list of all their investments. So, we do keep in touch with them very closely throughout the year.

Mr. AIKEN: I would like to ask Mr. Humphrys a question relating to sub-section 7 concerning mortgages in real estate.

The CHAIRMAN: What page is that?

Mr. AIKEN: Page 12.

The CHAIRMAN: I do not think I have asked Mr. Humphrys to explain clause (p) on page 11. He made reference to it but has not discussed it. Mr. Aiken, I am not trying to rule you out of order, but I think you are a little ahead of our discussion.

Mr. AIKEN: I would leave it, if you wish, but it was related to the general question of investments in real estate and real estate mortgages.

The CHAIRMAN: Carry on, Mr. Aiken.

Mr. AIKEN: Previous questions related to the total holdings of a company in real estate or in mortgages on real estate. My question relates to the percentage of value that the companies will be permitted to acquire. This bill raises from two thirds to three quarters the amount of appraised value they can use. This has particularly worried me and I would like to ask a couple of questions about it.

Could Mr. Humphrys tell me whether this provision is put in there for the benefit of insurance companies or of the building business? I am referring to an incentive to increase construction and, if I might explain it, I think that increasing the percentage by which a mortgage can be held reduces the value of a trust investment, so you cannot justify it from that angle—that is, from the angle of improving the trust holdings of an insurance company. So, the only other reason must be that it will be an incentive to the construction of

Canadian housing and commercial construction. Could you tell me which of these proposals is the correct one?

Mr. HUMPHRYS: The increase in the maximum limit on mortgages has been requested by the industry and it is an increase that it seems can be made without undue risk, principally because the great majority of mortgages now are paid off on an amortized basis with monthly or periodic payments. In years gone by this was not the case, and for many years the maximum that could be lent on the security of a real estate mortgage was 60 per cent of the value of the real estate. That was raised to 66 $\frac{2}{3}$ per cent a few years ago. Having in mind the good record of mortgages and even, more important, the practice of amortizing mortgages so that the principal is brought down quite rapidly, other jurisdictions have made changes of this type, particularly in the United States. A good many states down there have raised their mortgage limits to 75 per cent and some other companies operating in Canada are making higher ratio mortgage loans. There are desirable investments in this area. The industry feels, if they can make these higher ratio loans, they can get good investments and can compete with other companies that are in the mortgage field. It is not expected, and I do not believe the industry implies, that every mortgage loan will now be for 75 per cent of the real estate value. They obviously will exercise discretion on the point of whether or not they will lend up to 75 per cent on a particular proposal. But, this will enable them to do so where they think it to be otherwise desirable.

Mr. AIKEN: May I ask about the requests that the life companies have made. Have these been requests through the association of life companies?

Mr. HUMPHRYS: Yes.

Mr. AIKEN: Or, by various individual companies.

Mr. HUMPHRYS: By the life company association.

Mr. AIKEN: Do you have any figures or ideas at the present time to indicate what the present practice is on loans? Do they now lend up to two thirds, or is this an individual company policy?

Mr. HUMPHRYS: I do not think it would be possible to say that any company follows an absolutely uniform practice. But I think it is fair to say that under present conditions a substantial proportion of their loans are up to maximum.

Mr. AIKEN: Do you know why the life companies want to have this? Do they explain it, or just ask for it?

Mr. HUMPHRYS: They feel that they can obtain good mortgages at a higher ratio, and good investments in this way. In the case of many desirable mortgage loans where the owner wants to borrow, he will go where he can get the ratio that he wants, perhaps what other companies in the market area will offer to him. The result is that these other companies will get the cream of these loans. So the industry in putting forward the request is doing so because it believes there are opportunities there for investment on the basis of a higher ratio. The amendment would also have the advantage that it would enable the borrower to obtain a higher proportion of the money he needs on a first mortgage loan, without having to go into the second mortgage market. This would be a secondary advantage to the public.

Mr. AIKEN: But in practice, will they do so? As it is, when anybody needs a second mortgage, is he going to stop here? Because I think most of them now can, by first or second mortgage go to 80 per cent. With this 75 per cent alternative situation, frankly I do not think that they will. It will merely result in putting up second mortgages to something like 90 per cent, which would bring about inflation. I am very concerned about this particular clause. Are we going to have these life companies here? Have they asked to appear?

The CHAIRMAN: No, they have not. They said that they have no objection to the bill, and have no representations to make.

Mr. AIKEN: Does that apply to the life companies as well as the trust companies?

The CHAIRMAN: The trust companies are coming; they also have circulated a brief. You may have missed it, but there are some copies here and we shall see that you get one. The trust companies are making representations and will be here. The World Mortgage Corporation has asked to come independently, and it will be making representations.

Mr. AIKEN: May I ask what name you call them? Is it the association of life companies?

Mr. HUMPHRYS: It is the Canadian Life Insurance Officers Association.

Mr. AIKEN: This association has requested this increase. Has a similar request come from other organizations affected by this bill?

Mr. HUMPHRYS: The trust and loan companies?

Mr. AIKEN: Yes.

Mr. HUMPHRYS: Yes.

Mr. AIKEN: They also wish an increase to 75 per cent?

Mr. HUMPHRYS: Yes.

Mr. AIKEN: Who is going to protect the public?

Mr. MOREAU: From what?

The CHAIRMAN: Well!

Mr. AIKEN: I am asking this question: must I take it for granted that there may be some slight justification for my concern about increasing the amount of mortgages? Who is going to put the other side of the case to us, if the life and the trust companies are all agreeable to it? Who are we going to hear? I would like to hear somebody on the other side; and if nobody comes, I shall not be satisfied.

Mr. HUMPHRYS: I suggest that although the request has come to the government from the industry, the proposal to increase it is in the bill proposed by the government, so that the government and the department are satisfied that in putting forward his change there will not be a degree of increased risk or danger to the public of such proportions that it would justify refusing it.

Mr. AIKEN: Is this because the total limit of real estate holdings is also already fixed in the bill?

Mr. HUMPHRYS: The question of investment in mortgages is not under any over-all limit. The limit I referred to earlier is on the ownership of real estate. But there is no limit on the total proportion of funds which they may invest in mortgages.

Mr. AIKEN: So a life company or trust company has no ceiling on the amount of real estate mortgages which they can hold?

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: I have done a lot of mortgage business over the years, and this really concerns me.

Mr. HUMPHRYS: At the present time Canadian life insurance companies have 39 per cent of their assets in mortgages—as of the end of 1963.

Mr. MOREAU: By way of clarification, these are merely permissive figures, as I understand it.

The CHAIRMAN: I am sorry, Mr. Moreau, but Mr. Asselin has been trying to ask a question for a long time. I have to keep some order. I wonder if Mr. Aiken has finished?

Mr. AIKEN: I have asked the question and I do not want to come back to it.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I have no objection to yielding to Mr. Moreau.

The CHAIRMAN: No, you go ahead, Mr. Asselin.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I was going to point out that there was a maximum in the present figures, and that unlike one or two of the previous questions, I was wondering why, for instance, a maximum permissive figure could not be 90 per cent instead of 75 per cent, in the same way as it is with the National Housing Act. After all, what you are dealing with here is the money of the stockholders. I consider the taxpayers to be the stockholders, and should it go up to 90 per cent, and quite often this maximum figure is used, I wonder about the question of inflation.

The CHAIRMAN: Do you have a question to direct to the witness?

Mr. AIKEN: That was exactly my first question.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I would like to complete my question. I am going to ask Mr. Humphrys if he thinks that 90 per cent might be a bad thing, or would he consider it reasonable? I also want to ask him in connection with inflation and the questions raised by one of the members, whether this was a valid argument, since the borrower on a mortgage—if he cannot get a sufficient amount, let us say, the maximum permissive figure of 75 per cent—will go to a second mortgage dealer and will pay a higher percentage, and thus be able to get it. Here we have the same problem of inflation. And third, in respect of my point of view, the higher maximum figure or percentage for borrowing would I think be a greater attraction to the public because it would not require so many people to go into the second mortgage field. I would like to hear Mr. Humphrys views on this.

Mr. HUMPHRYS: I would think that to raise the limit—

Mr. ASSELIN (*Notre-Dame-de-Grâce*): Let me state my question more simply: Has he considered the possibility of having a higher maximum figure? What are his views on, let us say, bringing it up to a figure of around 90 per cent?

Mr. HUMPHRYS: I would not personally recommend increasing the limit beyond 75 per cent. I believe the analogy of the mortgages made under the National Housing Act does not quite extend to here because those loans made in years gone by were subject to government guarantee, and at the present time they carry insurance operated by Central Mortgage and Housing Corporation, so that they have an additional security which provides the element of safety needed with high ratio loans.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): May I interrupt to ask you this. You mentioned a government guarantee. Does the government not guarantee with the taxpayer's money? The analogy I made works a great deal differently if it be the taxpayer's money in one case, or money lent out on a mortgage in the other.

Mr. HUMPHRYS: I would say it was the policyholders' money.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): You say the money of the policyholders. Is that not public money?

Mr. HUMPHRYS: I would not think that the purpose of this legislation, which is to put certain restrictions on the way in which insurance companies may

invest the money which has been, in a sense, entrusted to them by their policyholders, should be regarded in the same sense as the way in which the government might use money which it has collected through taxes.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I am sure you are not suggesting that the money which is collected from the taxpayers should be treated any more lightly than the money that the company receives from its policyholders.

Mr. HUMPHRYS: I did not suggest that.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I have a question to ask Mr. Humphrys concerning page 9, and I would like permission to go back to it, because I missed the opportunity to do so the other day when I had to leave to go to the defence committee.

The CHAIRMAN: Mr. Moreau.

Mr. MOREAU: I want to bring out essentially the fact that I think insurance companies wanted this change in a sense in order to place themselves in a more competitive position in this field. I think for the benefit of the companies therefore the policyholders using the company of course, on any loans, are now up to 90 per cent. In many other areas they were able to lend on higher grade property up to the same maximum levels, and therefore I would think that this move would be a step proposed by the insurance companies to put them in a more competitive position in this particular area of investment. I wonder what your views would be? Is this right or not?

Mr. HUMPHRYS: I would agree with you, yes.

Mr. MOREAU: My second point is this. Is it essentially on the valuation provisions? This amending bill makes no provision for valuation, but neither did the previous act. In other words, my point is essentially that when it comes to evaluation, these loans of 60 per cent of the assessed value, or 75 per cent—do not change the basic valuation in the first place.

Mr. HUMPHRYS: That is correct.

Mr. MOREAU: In other words, it is an unchanged condition. And I would ask also if it would not be your impression that the insurance companies now, having had quite a long history of experience in the mortgage lending field, and having developed a rather sophisticated mortgage department, would be better able to cope. In other words, this 66 per cent provision, now raised to 75 per cent, would be probably quite justified.

Mr. HUMPHRYS: Yes, I believe that is a fair statement of the situation.

Mr. GELBER: In regard to the point raised by Mr. Aiken and Mr. Asselin, I am sorry that I was not here at the beginning of the meeting when you dealt with this matter. We were told the other day that British insurance companies are restricted to the terms of their portfolio. But are they restricted to what they may lend out in terms of percentage?

Mr. HUMPHRYS: British insurance companies doing business in Canada are required under this legislation to lodge assets in Canada with the Minister of Finance, or with trust companies in Canada to cover their Canadian liabilities. They must maintain assets in Canada covering their liabilities in Canada. The types of assets that they may use for this purpose are similar to those that Canadian companies may invest in. If they want to deposit mortgage loans they must be mortgages within the limits applicable to Canadian companies. At home, they are not subject to such limits.

Mr. GELBER: What about the law in Britain for insurance companies dealing in Britain? Are they restricted in the percentage of capital value that they can advance in mortgages?

Mr. HUMPHRYS: No, they are not.

Mr. GELBER: What about American companies?

Mr. HUMPHRYS: They are usually so restricted.

Mr. GELBER: Do you know the amount?

Mr. HUMPHRYS: It has been in the order of 60 per cent or two thirds, and in more recent years a number of the leading states have raised their limit to 75 per cent, most prominently New York, which has been regarded in the United States as being a leader in insurance legislation. They have just this year increased their limit to 75 per cent.

Mr. GELBER: If the rate is increased and the amount of percentage increased that the insurance companies can advance to, will this not tend towards the insurance companies having less funds on loan available to other borrowers?

Mr. HUMPHRYS: It could happen. If they make larger loans, they might make fewer loans.

Mr. GELBER: But with the 90 per cent, it would tend to be more pronounced.

Mr. HUMPHRYS: That is quite right. If the companies do not want to put out any more of their assets, in total, in mortgage loans, they might find themselves handling fewer loans but for higher amounts.

Mr. GELBER: I presume the fact that lenders like insurance companies have mortgages of a higher percentage of capital value would increase the capital value of any property, would it not?

Mr. HUMPHRYS: I would not think so.

Mr. GELBER: Do you not think that the capital value is estimated on the going rate of borrowing?

Mr. HUMPHRYS: The rule is stated the other way, that they cannot lend more than a proportion of the value of the property.

Mr. GELBER: Yes. But I am thinking of the policy of the insurance companies. I am thinking of a capital asset in the market, to be financed at a lower rate of interest. It would have a higher capital value, would it not?

The CHAIRMAN: Let us have the question.

Mr. GELBER: That is the question, and it is whether by increasing the percentage to be advanced it enhances the capital value. I suggest that it does.

Mr. HUMPHRYS: I would doubt that it would change the market value of the property.

Mr. GELBER: All right, we disagree.

The CHAIRMAN: Now, Mr. Pascoe.

Mr. PASCOE: My question may be pretty obvious to answer, but it is along the lines we have been talking about, of insurance companies lending on the security of real estate up to the maximum of its value. Most of the discussion so far has been with regard to real estate in cities, speaking as a western man; would it also apply to mortgages on farm property?

Mr. HUMPHRYS: The legislation does not contain any restriction to any particular type of property.

Mr. PASCOE: So they could lend up to 75 per cent of the value?

Mr. HUMPHRYS: So far as the legal provisions are concerned, yes.

The CHAIRMAN: Let us get back now.

Mr. AIKEN: Right at this point I would like to clear up something with a statement of my position. We have been talking about two fundamentally different proposals. This was the nature of my first question to Mr. Humphrys on the subject. Then there is the question of the incentive to the construction business which the government is concerned with logically, and for other reasons, that is, the investment of money. This is where Central Mortgage and

Housing Corporation and other people come into the field and lend more than what is a safe investment in the normal sense of handling trust funds.

The other position I am referring to, and the story we are dealing with here, is the necessity of handling trust funds which are given over to life insurance companies and trust and loan companies to administer. My point is that Canada so far has had a very good reputation in safe investment of money in their insurance and trust companies. But here we are now getting into some thing different. We are getting into the handling of trust funds which have always been kept within—not ordinary limits, but within safe limits, to cover any situation of a general downward trend in valuation, and it would not take very much reduction in real estate to go down to 75 per cent of the present inflated value in a lot of cases.

Mr. MOREAU: I do not like to interrupt.

Mr. AIKEN: Well then, do not do so. I would like to furnish my statement. If you do not want to interrupt, do not do it.

Mr. MOREAU: I have a point of order.

Mr. AIKEN: All right, you may raise your point of order.

Mr. MOREAU: I thought we were engaged in an explanation of the bill initially. But we now seem to have strayed away from it. I cannot see how our procedure is going to be enhanced by receiving a statement of opinion from one of our members concerning the bill. He is, of course, entitled to have his opinion. I am not questioning his right to have it in any way, but it does seem to me that we have strayed quite some distance away from the procedure we were undertaking to follow with respect to this bill.

The CHAIRMAN: It seems to me—and I shall rule on this if I may—that one of the important provisions of the bill is to increase the amount of money that may be lent on a mortgage, which could be 75 per cent. That is the nub of the point, and one of the reasons we are here, and why Mr. Aiken raised a number of questions. But I think it would help us if we could have his position clearly stated before us in view of the fact that we shall have representatives of various industries coming here.

Mr. MOREAU: May I have the same privilege to put my opinion on record as well.

The CHAIRMAN: If you have not made your point quite clearly.

Mr. AIKEN: I am not going to conclude my statement. I appreciate your suggestion, and I presume that I am being permitted to state my views. But it has never to my knowledge been our procedure that we must limit ourselves to questions as on the orders of the day when we have a witness before us. I shall not proceed on the basis that I am being permitted to do it. Surely I have the right, just as any other member, during the discussion to state an opinion. I have been present at committee meetings where people have taken as much as half an hour to state their opinions while the witness sat helplessly by. That is the position I take now. I think Mr. Moreau has the right to express his opinions as well, and while it may not shorten proceedings, nevertheless I think that the members have this right and that we should not restrict ourselves to questions to the witness.

The reason I am making this statement is that it appears that nobody is going to put to us the other side of the case. That is the point of my question. I am trying to get across the point that there may be some objection from the standpoint of public policy in permitting trust companies to lend up to 75 per cent of the appraised value of real estate, with moneys which are trust funds, which are held by them in trust. This is rather different from the Central Mortgage and Housing Corporation. The point of my discussion is this: Are we going to hear anybody who will say, "No, we should not do

it. Do not have any hesitation about it." The life companies obviously want it, and the government will obviously give it to them. But I want to know whether this is proper, and I want to know whom we might call to give some opinion of it. I may say that I have some doubts about it, and I am not the only one.

The CHAIRMAN: I do not think the Chairman should become involved. The question raised at the steering committee was who should be called. No limits were placed on the committee. I might say that everyone whose name has been advanced so far has been notified. Every name put forth to the steering committee and every group were notified. I do not know what the trust companies will say when they arrive next week, but I believe that on this particular point they have no objection.

Mr. MOREAU: I would not want to restrict Mr. Aiken from an expression of his views in any way, but I thought we had agreed to hear an explanation of the bill first, and then go into the argument as to the particulars and the kind of bill. I take exception to the statement that any National Housing Act loan was made over the limit. As I understand it the National Housing Act statistics of recovery of loans experience has been very good. It seems to me that this was a matter of opinion rather than of fact. However, I apologize for the intervention I made. I think our arguments might come later on in the discussion.

The CHAIRMAN: I think we have cleared the air now.

Mr. MUNRO: I take it to be the procedure that we ask our questions now, and follow with the argument later.

The CHAIRMAN: We do have a witness who has experience and knowledge, and I think it is quite appropriate to put questions to him, if they are proper questions. That is why he is here, to explain and answer questions.

Mr. AIKEN: I have concluded what I wanted to say, because that is the reason I raised this, since it appears that the life companies are not coming at all, and the trust companies are going to agree to this provision. But perhaps this is something we should take up in the steering committee.

The CHAIRMAN: Are there any further questions? I believe we are now at page 11 on subclause (p), am I correct?

Mr. HUMPHRYS: Paragraph (p).

Mr. ASSELIN (*Notre-Dame-de-Grâce*): May I have permission to ask a question. I want to know your views on the provision to allow insurance companies to invest in companies with earning records as opposed to dividends, having regard to five years, or the making of an attempt to open up the field a little in order to provide a greater field for investment? I was wondering whether in that provision the question of earnings was considered, and also the statement which was made that the earnings have to be made in each year? My question may be somewhat academic.

The CHAIRMAN: I do not want to appear to be facetious or rough, but we did spend almost a whole morning on this subject. May I suggest that Mr. Humphrys speak to you about it in the break, and if you are not satisfied at that time, then we will give you the floor at the next meeting. We spent almost all of the last meeting on the subject of dividends and earnings.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I was present for most of that meeting.

The CHAIRMAN: I realize that you had to leave to attend another committee meeting, and I thank you for your co-operation. Let us go on with paragraph (p).

Mr. HUMPHRYS: Paragraph (p) is a provision to enable companies to make further investments in real estate for the production of income. This type of

property would not be of a leaseback type, such as we have discussed. This property would be eligible if it had an earnings record of over a three year period such as to give a reasonable probability that the company would be able to recover at least 85 per cent of its investment during the remaining lifetime of the property, and would receive a reasonable rate of return. The maximum limit on the investment on any one parcel of such real estate is 2 per cent of the company's assets, and the company would not be able to invest more than 10 per cent of its assets in this type of real estate together with the type of real estate they might buy under the basket.

The CHAIRMAN: I would suggest you carry on.

Mr. HUMPHRYS: Subclause (7) deals with the power of companies to lend on real estate mortgages. Earlier we discussed their power to invest in real estate mortgages. This would enable them to lend on a real estate mortgage where the mortgage is up to a maximum of three quarters of the value of the real estate, instead of two thirds, as at present.

Subclause (8) deals with a minor technical point in respect of securities received by a company on reorganization, liquidation or amalgamation of a corporation whose securities it owns at that time. It has no choice about receiving the securities issued on the reorganization, but the legislation formerly prohibited it holding those securities for more than five years, except with the concurrence of treasury board. This change will enable them to hold them so long as they wish. It is a minor point. They do not receive many of these, and they have no choice in any event whether they take them or not.

Mr. GELBER: Is a life company allowed to lend on a back-to-back basis; is it allowed to advance money against an existing mortgage?

Mr. HUMPHRYS: To lend on the security of a mortgage?

Mr. GELBER: An existing mortgage.

Mr. HUMPHRYS: Yes, I think it is, under the legislation. It is very rarely done.

Mr. GELBER: It does not have to be the original lender?

Mr. HUMPHRYS: No.

The CHAIRMAN: Carry on, Mr. Humphrys.

Mr. HUMPHRYS: Subclause (4) on page 13 deals with the basket provision. It increases the maximum proportion of a company's assets which may be invested at its own discretion from 5 per cent of the assets to 7 per cent. It also increases the maximum size of particular parcels of real estate that may be purchased pursuant to this provision from half of one per cent of the company's assets to one per cent, and broadens the range of partners with which the company may join in making real estate investments under this provision.

Mr. LAMBERT: This would also include captive real estate companies.

Mr. HUMPHRYS: This would enable them to own the real estate directly, but not a subsidiary corporation. We will get to the subsidiary corporations later.

Mr. LAMBERT: But among the partners.

Mr. HUMPHRYS: No. The partners are other insurance companies transacting the business of insurance in Canada.

Mr. McCUTCHEON: Under subsection (a), "a company transacting business", and so on, they now are allowed one per cent of assets. I am not just too clear on this. Would this mean that if two companies work together on this, a 50 per cent share could be one per cent of the assets?

Mr. HUMPHRYS: Yes. Paragraph (a) deals with investments in real estate and governs the maximum that any one company can invest in a particular parcel.

Mr. McCUTCHEON: In a very large property, conceivably they could own 50 per cent of it and one per cent of their assets would be that amount?

Mr. HUMPHRYS: Yes.

Mr. MUNRO: On Mr. Gelber's point, I understand that insurance companies can take a mortgage on a mortgage.

Mr. HUMPHRYS: Yes. It is very rarely done. I cannot recall any instance. However, the legislation is such that it would permit them to do that. The provision is incidental, because it says they can lend on the security of any asset in which they can invest.

Subclause (9) amends two subsections. The first is subsection (7) which deals with the limit on the maximum investment in common shares. This raises the limit from 15 per cent of the company's assets to 25 per cent.

Mr. LAMBERT: This is another one of the major objectives of this legislation?

Mr. HUMPHRYS: Yes. Subsection (8) places a maximum limit on investments in real estate for the production of income. The change is the removing from the limit the leaseback type of real estate. The 10 per cent limit still applies to real estate purchased pursuant to the basket provision, and real estate purchased pursuant to paragraph (p) which I have just described.

The CHAIRMAN: As I understand it, that ends the investment provision of this part of the bill.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I did not quite understand what you meant about the leaseback provision.

Mr. HUMPHRYS: Under the existing legislation there is a limit of 10 per cent on the amount a company may invest in real estate for the production of income. That real estate now is of two types; the first is real estate which has been leased on a long term basis to a corporation with a sound financial record. The other is real estate purchased pursuant to the basket provision. It is now proposed to give companies additional power to invest in real estate on the basis of the earnings record of the real estate. The 10 per cent limit will apply to the basket real estate, and to new real estate qualified on as earnings test, but it will not apply to the leaseback type.

Mr. ASSELIN (*Notre-Dame-de-Grâce*): I see.

Clause stands.

On clause 6—*Power of life insurance company to invest in shares of insurance and real estate companies.*

Mr. HUMPHRYS: Clause 6 enacts a new section 64A that will enable a life insurance company to own subsidiaries in three circumstances. The first is a corporation incorporated outside of Canada to undertake life insurance, and the second is a corporation incorporated under the laws of Canada to undertake insurance other than life insurance. The third is a corporation incorporated to acquire, hold, maintain, improve, lease, or manage real estate or leaseholds. These powers will be subject to terms and conditions prescribed by the treasury board on the recommendation of the superintendent.

This section is a new departure in that it enables life insurance companies to own subsidiaries, in the provided circumstances, which they have not been able to do hitherto.

Mr. LAMBERT: Is it intended that Canadian life insurance companies will be on a competitive basis with some of the foreign companies which have come into Canada on a life insurance basis, and which have control of fire and casualty insurance companies? For instance, the Dutch interest moved into Canada a few years ago, and bought the Commercial Life and a group of Halifax fire and casualty companies.

Mr. HUMPHRYS: It would enable them to own fire and casualty subsidiaries in Canada, and to that extent operate in the same fashion as some British and European companies.

Mr. LAMBERT: You do not see any conflict of interest, do you, in the life insurance companies being involved in a mortgage, and the fire insurance covering the property being put on by a subsidiary of the mortgagee?

Mr. HUMPHRYS: No; I do not see any serious degree of conflict of interest. I think it would be a community of interest in seeing that the property is protected, and if they can get the insurance as well it probably flows with the same interest in the investment.

Mr. LAMBERT: Is there not a provision in your legislation to the effect that it cannot be made a condition of the granting of the mortgage that insurance be taken out in a specified company?

Mr. HUMPHRYS: No; there is nothing in our legislation dealing with this point.

Mr. LAMBERT: I know there is in some provincial legislation; that is, in order to obtain a loan it not be a condition of the granting of the loan that insurance shall be placed with a specified insurance company, or if there is existing insurance that it be transferred to that particular company. I do not know whether or not there is jurisdiction in the federal field, but I do know in my own home province of Alberta this exists. It is an offence. I think it is a very salutary provision.

Mr. HUMPHRYS: We have had many complaints on this point, but I felt there is nothing in our law which enables us to do anything about it, and personally I would doubt the jurisdiction.

Mr. LAMBERT: I wonder whether your officers would look into the matter of whether or not you have the jurisdiction, and the matter of whether it might be a point to consider?

Mr. HUMPHRYS: We have looked into it when we have received complaints.

Mr. LAMBERT: Now that you are allowing life insurance companies to move much further into the direct interest field of property through the leaseback and these other provisions, it might be a serious temptation. However, to the present they have not had a direct interest in a fire insurance company?

Mr. HUMPHRYS: Very rarely.

Mr. LAMBERT: Well, they really could not have; but now they will be entitled to have a subsidiary fire insurance company and therefore I think the temptation would be rather great.

Mr. HUMPHRYS: I will undertake to raise this matter with our legal advisers.

Mr. GELBER: Mr. Chairman, the other day I raised this point on the question of Canadian life companies buying an interest in other Canadian life companies. We discussed that under certain conditions and said that investment could be made. I do not know why there is the discrimination as set out in (b). What is the reason for it?

Mr. HUMPHRYS: In (b)?

Mr. GELBER: Yes.

Mr. HUMPHRYS: Could you clarify the particular discrimination you have in mind?

Mr. GELBER: Companies can buy any corporation incorporated under the laws of Canada to undertake contracts of insurance, other than contracts of life insurance. Why is this restriction put in?

Mr. HUMPHRYS: It is not intended, under these provisions, to enable life insurance companies to own subsidiary life insurance companies in the same field to compete with themselves. There is a subsequent amendment proposed to enable life insurance companies to buy the shares of other life insurance companies leading to merger or amalgamation, but there seems to be no need to enable a life insurance company to operate a subsidiary in competition with itself; there is no public interest to be served by it. It only confuses the problem of determining the financial state of the companies taken together.

Mr. GELBER: I am very much concerned about whether there is a real problem. I realize that you are not concerned with the matter of policy. We are very much concerned in another area with the question of foreign ownership and the fact that many life insurance companies have been purchased by companies in the United States which are not subject to the same restrictions our companies are. We have been inviting foreign companies to buy control of our smaller companies, while our life insurance companies have been restricted. There is a certain scope which has been extended here and there is an opportunity for a life insurance company, under certain conditions, to buy a subsidiary. I realize you are not concerned with the matter of policy. However, is the real problem for us that we do not want life insurance companies to be competing with themselves? I wonder whether there is a more compelling reason here, and whether it stems from a fear of monopoly that is many years old. I am wondering whether this is just the past reflected here in this restriction, and I wonder whether there is a more compelling reason for this restriction. I do not want to discuss the matter of policy, but I would like to know whether or not there is any reason within your department?

Mr. HUMPHRYS: I could make comments which I think are relevant to the general questions you have raised. In this act there are proposals that will prevent non-residents gaining control of Canadian life insurance companies in the future. So, the problem we have faced of companies being sold to foreign interests will be controlled by this legislation.

Secondly, where foreign companies have bought existing Canadian life insurance companies, they have discontinued operating in Canada in their own name except on a re-insurance basis, so they do not operate in their own name in competition with their subsidiary in the Canadian field.

Thirdly, there are not a great many Canadian life insurance companies. It is a long and difficult process to build up a new company. If the way was open for Canadian companies, one to buy the other, the large companies no doubt long since would have bought up the small ones and we would have fewer and fewer and larger and larger companies. I think, perhaps this would lead to the formation of more new companies. Because it is such a long and difficult process to form and establish a life insurance company, I do not think it would be in the best interests of policyholders to have a large number of new small companies in place of the companies we have now.

These amendments, nevertheless, will open the way to a broadening of the power now existing in the act to merge and amalgamate. For many years companies have had the power to merge and amalgamate one with the other within the existing legislation, but have not had the power to purchase shares for that purpose. The amendment that will be described later enables them to purchase shares; it rounds out the power to amalgamate one with the other. To the extent that what you might call a rationalization of the industry is in the public interest, it can be accomplished in existing legislation together with the amendments.

Mr. GELBER: Are you saying that this restriction is no longer important because of other aspects of this bill?

Mr. HUMPHRYS: I would not wish to imply that. I meant to point out that the general policy of not having a Canadian life insurance company own a subsidiary and competing with itself in the same field is consistent with the pattern that has been evidenced in cases where a non-resident company has bought a Canadian subsidiary. They do not continue to operate in the same field. Further, it has the effect that the Canadian company still is in existence rather than having disappeared by amalgamation.

Mr. GELBER: Your chief concern now is that the same company should not be operating under two different names, but if they are prepared to amalgamate that is satisfactory?

Mr. HUMPHRYS: I can see no purpose to be served by merely enabling one life insurance company to buy another and operate it as a subsidiary. I can see that there may be cases where the two companies would wish to amalgamate and, in the past, that has been used only where one company is in the financial position such that it should be taken over by another; but it has not been used merely to let big companies grow bigger. This power to amalgamate always has been subject to government approval.

Mr. KINDT: But you remove the obstacle to their growing bigger.

Mr. HUMPHRYS: The amendments here will round out the power they now have to merge and amalgamate, but it still is subject to government approval. So, if the government approves a proposal it would enable the companies to grow bigger by absorbing smaller companies.

Mr. KINDT: Will this in any way permit the big fish to eat up the small ones?

Mr. HUMPHRYS: Yes, if the governments permit it; but the power to buy shares in a life insurance company, except where it is a foreign company, is subject to government approval.

Mr. LAMBERT: And always has been so.

Mr. KLEIN: You stated that you were going to deal later on with the question of foreign purchases of local life insurance companies.

Mr. HUMPHRYS: No. I said this already had been dealt with in the provisions that were discussed last week, being limitations on non-resident ownership of shares of Canadian life insurance companies.

Mr. KLEIN: Could someone indirectly do what the act is trying to prevent them doing directly; that is, could the local life insurance company purchase as a subsidiary a life insurance company existing outside Canada, which subsidiary life insurance company in turn could purchase another life insurance company in Canada?

Mr. HUMPHRYS: No. A life insurance company incorporated outside Canada is treated as a non-resident for the purpose of these restrictions regardless of who owns it.

Mr. KLEIN: I am not asking that.

Mr. HUMPHRYS: Therefore, in answer to your question, the foreign incorporated subsidiary could not buy control of a Canadian life insurance company because these provisions that we discussed earlier limit the proportion of shares of a life insurance company that can be purchased by a non-resident.

Mr. KLEIN: But the owners of the subsidiary company then would be Canadian?

Mr. HUMPHRYS: Yes, but under the definitions, if a company is incorporated outside Canada it is defined as a non-resident and the restrictions applied to it.

Clause stands.

On clause 7:

Mr. HUMPHRYS: Clause 7 deals with a minor point.

Mr. McCUTCHEON: May I interrupt? Who requested the provision to take over fire and casualty companies; was it the life officers?

Mr. HUMPHRYS: They asked that they be empowered to own subsidiaries in this field.

Mr. McCUTCHEON: The life officers?

Mr. HUMPHRYS: Yes. Under the existing legislation a life insurance company has the power to go into other classes of insurance subject to treasury board approval. They never have used that power to get into the general insurance business, except in one case. If they were to get into the general insurance business, it would be better that they do so by way of a subsidiary company than by way of a separate fund within the company, because the interest of the life insurance policyholders would be better protected if the general insurance business were done in a separate company.

Mr. McCUTCHEON: But this did originate with the life officers?

Mr. HUMPHRYS: Yes. Clause 7 proposes a new paragraph to deal with a minor technical point. In moving their employees from one part of the country to another, companies often have wished to be able to purchase the residence of the employee who is being moved, or buy a home for him temporarily in his new location. Because of the rather strict provisions dealing with the power of a company to own real estate, this has not been within their power. This provision will enable them to buy the real estate property and carry it as an asset for a temporary period. It is a small point, but a troublesome one technically.

Clause stands.

On clause 8:

Mr. HUMPHRYS: Clause 8 amends the provisions dealing with the valuation of assets for purposes of financial statements of companies. At present companies are required to carry assets in their financial statement on two bases. If assets are bonds of the government of Canada or of a province of Canada, of the government of the United States or the United Kingdom, they must carry the securities at values that do not exceed in total the amortized values. These are values computed on a formula basis running from the purchase price to the maturity value. All other assets must be shown at values that in total do not exceed the market values.

This proposal would enable the companies to carry these latter assets at book values, less a deduction, the deduction being a proportion of the difference between the book value and the market value. The proportion is so determined that in the case of a drop in market values they would have a period of three years in which they could bring their asset values down to the market. This will enable companies to absorb the impact of a decline in market values over a period of three years rather than absorb it all at once.

Mr. LAMBERT: This would be a sort of cushioning of a 1929 situation?

Mr. HUMPHRYS: That is correct. It has been suggested that one of the impediments to larger investment in common shares has been the fear of temporary fluctuations in the market value leading to a severe impact on the company's financial statement. The financial statements are published every year in the report of the department of insurance.

This provision would enable them to smooth over fluctuations in the market values, but still would require them to come down to market over a period of three years if the decline is more than a temporary decline.

Mr. LAMBERT: In other words, this allows you to hide a temporary recession?

Mr. HUMPHRYS: Yes. Perhaps I should not use the word "hide", but it enables companies to present their balance sheets without having to reflect the full impact of a temporary recession. The published statements, however, in the reports of the department always reveal the actual market values as well as the values at which the securities are being carried in the balance sheet, so the information is public.

Mr. LAMBERT: The information actually would be available?

Mr. HUMPHRYS: Yes, in the published report of the department.

Clause stands.

Mr. KINDT: Mr. Chairman, since the time now is 12 o'clock and since we have been in session for approximately two hours I wonder if we could adjourn. Also, it is questionable whether or not we have a quorum.

The CHAIRMAN: We do have a quorum.

Mr. KINDT: Well, if some of the rest of us leave we may not. I was just wondering if we should not adjourn at this time.

The CHAIRMAN: Could I appeal to you to sit until 12.15? I had hoped to sit until 12.30.

Mr. LAMBERT: Mr. Chairman, I am now a half hour late for another meeting.

The CHAIRMAN: Well, if you have to go that will be all right.

Mr. HUMPHRYS: Page 17 would complete the Canadian companies. Then we would have the British and foreign companies left.

The CHAIRMAN: I realize that. Mr. Humphrys has made a suggestion that he explain until the end of page 17 because that completes the Canadian companies. At that stage you could withhold any questions until our next meeting. However, I am in your hands.

Mr. KLEIN: When do we meet again?

The CHAIRMAN: On Tuesday, unless the committee wants to meet tomorrow morning.

Mr. KLEIN: What about this afternoon?

Mr. RYNARD: We have other committee meetings.

The CHAIRMAN: I appreciate that that is one of the problems with which we are faced.

Mr. KLEIN: Then, what about this evening?

The CHAIRMAN: We decided we would not sit while the house was sitting unless it was the wish of the members of this committee. However, it is up to the members to decide whether or not they wish to sit while the house is sitting either this afternoon or this evening.

Mr. LAMBERT: Mr. Chairman, I am willing to stay for another 15 minutes.

The CHAIRMAN: Then we will finish up to page 17.

On clause 9—*Segregation of assets.*

Mr. HUMPHRYS: Clause 9 covers a technical point. Companies now may set up a separate fund and segregate assets in those funds as security for so-called variable contracts. These are contracts where the liabilities of the company are limited to the market value of the assets in the fund. Some companies start these funds by transferring a nest egg from other funds. As the law stands now they may not withdraw that nest egg until the fund is wound up. This allows them to withdraw it subject to the concurrence of the superintendent.

Clause stands.

On clause 10—*Rate of interest.*

Mr. HUMPHRYS: Clause 10 enables the superintendent to authorize the use of a rate of interest higher than the maximum now specified in the act for the calculation of the actuarial reserves of certain classes of policies, where a company applies for that approval and it justifies the appropriateness of a higher rate. Companies must now calculate their actuarial liabilities using an interest rate of $3\frac{1}{2}$ per cent for insurance and 4 per cent for annuities. This enables the superintendent to authorize use of a higher rate in certain specific cases.

Mr. LAMBERT: Under what circumstances?

Mr. HUMPHRYS: One illustration would be that of group annuities. I think that would be the main place where it would be used. That is, in respect of group annuities where companies are offering interest guarantees in excess of 4 per cent; they may be $4\frac{1}{2}$ per cent or higher. But, if they issue a policy with these guarantees the law requires them to set up reserves on a 4 per cent basis, which means they have to find some money from their surplus or elsewhere in order to set up that reserve. That puts them under considerable financial strain, whereas in the light of their interest earnings at the time these contracts are made it may be quite appropriate to authorize the use of a higher rate of interest.

Mr. KLEIN: The annuity may not be payable for years to come and permission would be granted on the basis of the earning current rather than when the annuity would come into force.

Mr. HUMPHRYS: That is correct.

Mr. KLEIN: I do not see any issue in that method.

Mr. HUMPHRYS: Under this the superintendent would have the power to withdraw the approval; if interest rates fell it might be necessary to revise the valuation basis. But, generally, companies continue to use the same valuation basis that they used to start with. However, if there is a substantial decline in interest rates, as was the case throughout the war years, they may reduce their whole interest basis.

Clause stands.

On clause 11—*No power to form other companies.*

Mr. HUMPHRYS: This is a consequential change. At present companies are prevented from engaging in the promotion of a new company; because of the granting of power to form subsidiaries in certain circumstances there is an exception proposed here.

Clause stands.

On clause 12—*Acquisition of business of other companies by purchase of shares.*

Mr. HUMPHRYS: Clause 12 deals with the power of a life insurance company to purchase the shares of another company for the purpose of amalgamating the one company with the other. While this provision is very long it is practically identical with corresponding provisions which are now in the Loan Companies Act and the Trust Companies Act. It requires treasury board approval and requires the purchasing company to buy at least 67 per cent of the shares; it requires the two companies to merge or amalgamate within a period of two years after the purchase, or such further period as the treasury board may prescribe.

Mr. MOREAU: This can only be done with the consent of the treasury board?

Mr. HUMPHRYS: Yes.

Clause stands.

The CHAIRMAN: Now, this concludes the part applying to Canadian companies and we are ready to start clause 13, which applies to British companies.

Mr. HUMPHRYS: Yes, clauses 13 through to 17 enacts amendments applicable to British companies that are, with one small exception, parallel to those we have discussed.

The CHAIRMAN: If I could go to another piece of business at this time I would like a motion for printing. The reason we did not put a blank motion is that we felt that with the Bank Act provisions coming up we may want to print more copies of our proceedings. So, we have been asking for permission in respect of each separate bill, and we overlooked this one. In the past the number of copies has been 750 in English and 300 in French. Could I have a motion to this effect?

Mr. MOREAU: I so move.

Mr. LAMBERT: I second the motion.

Motion agreed to.

The CHAIRMAN: When the steering committee met we were authorized to send out invitations to certain groups. We have Mr. Robinette coming next Tuesday. Although he has made his plans accordingly, we have not gone through this bill. But, with your concurrence I will let the invitation stand. Mr. Robinette said his presentation would not take more than half an hour and that, of course, would be in addition to questions put by members of the committee. But, you know what lawyers are. As I said, Mr. Robinette will be here at 10 o'clock next Tuesday morning.

Mr. LAMBERT: On behalf of whom is he appearing?

The CHAIRMAN: The World Mortgage Corporation. Is it agreed that we allow the invitation to stand as set out?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: This is the only corporation which is making an independent presentation.

The committee will adjourn until 10 o'clock next Tuesday morning. So far as I know, the committee will meet in this room.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

ANADA,

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

(TUESDAY, NOVEMBER 10, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESS:

(Mr. Richard Humphrys, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE
Chairman: Lawrence T. Pennell, Esq.
Vice-Chairman: R. Gendron, Esq.
and Messrs.

Aiken	Gelber	McLean (<i>Charlotte</i>)
Armstrong	Grafftey	Monteith
Asselin (<i>Notre-Dame-de-Grâce</i>)	Gray	More
Basford	Grégoire	Moreau
Bell	Greene	Munro
Blouin	*Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Jewett (<i>Miss</i>)	Otto
Caouette	Jones (<i>Mrs.</i>)	Pascoe
Chrétien	Kindt	Rynard
Côté (<i>Chicoutimi</i>)	Klein	Scott
Douglas	Lambert	Tardif
Frenette	Leblanc	Thomas
Flemming (<i>Victoria-Carleton</i>)	Lloyd	Vincent
	Macaluso	Wahn
	Mackasey	Whelan
	McCutcheon	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

*Replaced Mr. Addison on November 9.

ORDERS OF REFERENCE

THURSDAY, November 5, 1964.

Ordered,—That the name of Mr. Addison be substituted for that of Mr. Berger on the Standing Committee on Banking and Commerce.

MONDAY, November 9, 1964.

Ordered,—That the name of Mr. Habel be substituted for that of Mr. Addison on the Standing Committee on Banking and Commerce.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, November 10, 1964.
(12)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Armstrong, Chrétien, Gelber, Gray, Habel, Klein, Lambert, Lloyd, Moreau, Pascoe, Pennell, Rynard, Tardif and Thomas. (15)

In attendance: Mr. Richard Humphrys Superintendent of Insurance; Mr. William Fox, Executive Officer, and Mr. H. A. Urquhart, Loan and Trust Companies Branch, Department of Insurance.

The Chairman stated that he had been advised late yesterday afternoon by Mr. John Robinette, who was to have made representations today on behalf of World Mortgage Corporation, that he was unable to appear today. Mr. Robinette had asked the Chairman to extend his apologies to the Committee. It was agreed to proceed with clause by clause consideration of the Bill.

The Chairman reminded the Committee that the Trust Companies Association of Canada is scheduled to present a brief at 10.00 a.m. on Thursday, November 12; however, because the House will not sit on Wednesday, November 11, party caucuses will be held on Thursday, November 12. The Committee agreed to sit from 10.00 to 11.00 a.m. on Thursday and re-convene in the afternoon, if necessary.

The Committee resumed consideration of Bill C-123, an Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys explained the purpose of Clause 13 and the proposed amendments thereto, and the Clause was permitted to stand.

Mr. Humphrys explained the purpose of Clauses 14 to 18, inclusive, was questioned, and the Clauses were allowed to stand.

The Committee then proceeded to consideration of Part II of the Bill, being amendments to the *Foreign Insurance Companies Act*. The witness explained that the amendments in Part II are parallel to those in Part I which deals with the *Canadian and British Insurance Companies Act*. After questioning, Part II (Clauses 19 to 25, inclusive) was allowed to stand.

The Chairman called Part III of the Bill, dealing with amendments to the *Trust Companies Act*. Mr. Humphrys explained the purpose of Clauses 26 to 33, inclusive, and the proposed amendment to Clause 29. After questioning, the Clauses were allowed to stand.

The Committee proceeded to consideration of Part IV of the Bill, dealing with amendments to the *Loan Companies Act*. The witness explained the purpose of Clauses 34 to 41 inclusive as well as the proposed amendment to Clause 37 and new Clause 41. The Clauses were allowed to stand.

At 12.05 p.m. the Committee adjourned until 10.00 a.m. on Thursday, November 12, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, November 10, 1964.

The CHAIRMAN: I see a quorum, gentlemen. The committee will come to order.

Earlier we received a wire from Mr. Robinette to the effect that he would be in attendance today to make a submission on behalf of the World Mortgage Corporation regarding the loan companies' section of the bill. However, a telephone call was received late yesterday afternoon advising me that he was unable to be present today because he is engaged in a case before the Supreme Court of Canada which has not concluded. Apparently the court had a recess which put him in a difficult position. Mr. Robinette tenders his apology to the committee and has asked that we carry on without him.

As a consequence I propose to ask Mr. Humphrys to continue explaining the bill to the committee and then I would hope we would go ahead to the section on the trust companies because the trust companies group will be in attendance here on Thursday. This raises a problem I had overlooked. I understand the government will be holding a caucus at 11 o'clock on Thursday morning. I do not know about the other parties. I would hope we would meet at 10 o'clock and carry on in the regular way. If some members of the committee have to leave, they will have to leave, and if the submissions are not completed in the morning, I would hope we might sit in the afternoon after orders of the day in order to permit the witnesses who are coming from Toronto to continue their submissions. Is this agreeable?

Agreed.

Mr. MOREAU: Perhaps we might meet at 10 o'clock and adjourn at 11 o'clock in view of the fact that we will be coming back later in the day.

The CHAIRMAN: We will deal with that on Thursday morning.

Gentlemen, I think we were on page 17 and had just completed that. We will go to the top of page 18.

On Clause 13—*Municipal, etc., securities.*

On Clause 14—*Real estate mortgages.*

On Clause 15—*Securities received on reorganization, liquidation or amalgamation.*

On Clause 16—*Other assets.*

On Clause 17—*Limitation on common shares.*

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman and members of the committee, clauses 13 through to 17 apply to British companies. They specify the classes of assets British companies may deposit with trustees in Canada. The act requires these companies to keep assets in Canada, either on deposit with the minister or in the hands of corporate trustees, at all times at least equal to their liabilities in Canada. In the past the principle has been to specify those classes of assets in the same terms, so far as possible, as are used to define the classes of assets in which Canadian companies may invest. So, the amendments in these clauses are parallel to the amendments we have discussed in earlier meetings relating to Canadian companies.

Subclause (1) deals with securities issued by Fabriques; the next deals with bonds secured by provincial subsidy—that is, hospital bonds; the next relates to corporate bonds secured by real estate or leaseholds. Then there is an amendment dealing with debentures and preferred shares. This amendment will qualify debentures if the common shares or preferred shares are eligible investments.

On page 19, subclause (6), there is one provision which is slightly different from that in the Canadian section. British companies may deposit only Canadian securities to cover their Canadian liabilities. They are authorized to deposit debentures guaranteed by a Canadian corporation that meets certain dividend or earnings tests. This amendment, subclause (6), would enable them to deposit debentures of a Canadian corporation that are guaranteed by a foreign corporation if the foreign corporation meets these dividend or earnings tests.

Subclause (7) deals with guaranteed investment certificates, preferred shares and common shares. The changes are parallel to those discussed for Canadian companies.

At the foot of page 20 there is a provision dealing with mortgages. It increases the mortgage limit from two thirds to three quarters of the value of the real estate.

On page 21, subclause (8) deals with investments in real estate and the changes are the same as for Canadian companies.

Clause 14 on page 22 deals with lending on real estate mortgages and increases the limit from two thirds to three quarters of the value of the real estate. Again this is the same as with Canadian companies.

Clause 15 deals with securities received on reorganization, liquidation or amalgamation of a company; that is, the company that issued the securities. This permits a British company to hold these securities on deposit without time limit. It is the same change as for Canadian companies.

Clause 16 deals with the basket provision.

Clause 17 deals with the limitation on common shares, increasing it from 15 per cent to 25 per cent. It also modifies the limit on real estate in the manner I discussed earlier; that is, it pulls out from under that 10 per cent limit the leaseback real estate.

Mr. LAMBERT: As a general word of explanation, I take it that British companies in essence are treated as though they were Canadian companies; they have no greater latitude than Canadian companies in respect of reserves in Canada. The reserves they carry must be in Canada and not abroad.

Mr. HUMPHRYS: That is correct. They are now required by statute to maintain assets in Canada, either under the control of the Minister of Finance, or vested in trust with corporate trustees in an amount at all times at least equal to their liabilities in Canada.

As I have said, the statutes are designed in so far as possible to apply the same requirements in respect of reserves and other liabilities as are applied to Canadian companies.

Clauses 13 to 17 inclusive, stand.

On Clause 18—*Securities of Jamaica, and Trinidad and Tobago*.

Mr. HUMPHRYS: Clause 18, subclause (1) applies to Canadian companies and enables them to invest in bonds and debentures issued by the governments of Jamaica or Trinidad and Tobago. Subclause (2) of that clause gives the same authority to British companies to invest in bonds issued by those governments.

Mr. LAMBERT: This is an extension of the class of government securities in which Canadian and British insurance companies may invest in order to qualify under the act.

Mr. HUMPHRYS: That is correct.

Mr. AIKEN: Does this provision apply already to most other commonwealth countries, or is it a special provision?

Mr. HUMPHRYS: The act now lists a number of commonwealth countries by name. This provision would add Jamaica, Trinidad and Tobago to those countries. Formerly, before these countries became independent, they did qualify under the general provision which enabled investment to be made in the bonds of a government of a colony of the United Kingdom, but when they became independent they slipped out from this.

Mr. LAMBERT: Was there an appreciable volume of investment in these securities?

Mr. HUMPHRYS: I would not say there is a large volume. Companies have been able to buy them through the basket provision if they so desired.

Clause stands.

Mr. HUMPHRYS: Part II, starting on page 24, applies to foreign companies and the amendments in that part in every way are parallel to those I have just discussed for British companies.

The CHAIRMAN: This takes us over to page 31 at the end of Part II.

On Clause 19.

On Clause 20—*Real estate mortgages.*

On Clause 21—*Securities received on reorganization, liquidation or amalgamation.*

On Clause 22—*Other assets.*

On Clause 23—*Limitation on common shares.*

On Clause 24—*Rate of interest.*

On Clause 25—*Securities of Jamaica, and Trinidad and Tobago.*

Mr. HUMPHRYS: I wish to make the comment that one of the amendments tabled at the beginning of the proceedings would apply to the beginning of Part II. This was omitted by oversight of the department. The amendment asked for is the insertion of a clause there which would be exactly parallel to the clause 9 appearing on page 15. It deals with the power of a company to set up a separate fund with separate assets to stand behind the so-called variable contracts where the liabilities vary with the market value of the assets in the fund. The amendment in the Canadian part would enable a company to withdraw a nest egg it had put in the fund to start the fund. It applies by cross reference to British companies. In other respects the amendments in Part II are the same as for British companies.

Mr. LAMBERT: Could you tell us what percentage of Canadian insurance business this category of foreign insurance companies writes, or what portion of the market do these companies share? We have the three categories, the Canadian companies, the British companies, and the foreign companies.

Mr. HUMPHRYS: I have that information, Mr. Lambert.

Mr. LAMBERT: As a second question, has their business been increasing; is it increasing and is it likely to increase?

Mr. HUMPHRYS: The amount of insurance in force at the end of 1963 for all companies registered with the department was \$57 billion in life insurance. Of that, \$39 billion was in the hands of Canadian companies, \$2 billion in the hands of British companies and \$15 billion in foreign companies. The foreign companies mostly are United States companies.

Mr. LAMBERT: Has the proportion of the business which they do been increasing on a steady pattern?

Mr. HUMPHRYS: No; there has not been any great change in the distribution of the business in those three categories.

Mr. GELBER: Is any proportion of that \$39 billion in the Canadian companies controlled abroad?

Mr. HUMPHRYS: Yes. About \$2 billion or around 5 per cent of the total is in the hands of Canadian companies that are not under Canadian control.

Mr. LAMBERT: Does that fall in the \$39 billion?

Mr. HUMPHRYS: Yes. If you want to determine the amount in companies under Canadian control, you would have to deduct that from the \$39 billion. It would be something in the order of two thirds of the total business.

Mr. THOMAS: Are these foreign companies compelled to keep assets in Canada in the same ratio as the British companies?

Mr. HUMPHRYS: Yes. The requirements applying to them are exactly the same as those which apply to British companies.

Mr. AIKEN: Mr. Thomas asked the very question I wanted to ask you, but perhaps I might be a little more specific. The provisions for investment by a Canadian company, a British company or a foreign company roughly are the same; that is, the proportion of the assets.

Mr. HUMPHRYS: Yes. The main distinction is that in respect of British and foreign companies they must deposit Canadian securities to cover their Canadian liabilities, whereas Canadian companies are not limited to investment in Canadian securities since they do have a considerable business abroad; but they also are required to keep assets in Canada sufficient to cover the Canadian liabilities.

Mr. GELBER: Could Mr. Humphrys give us the information concerning the amount of insurance in force abroad which has been written by Canadian companies?

Mr. HUMPHRYS: I think I have that information, but I will have to look it up.

Mr. MOREAU: Could you also break down the investment by Canadian companies in foreign countries into, shall we say, United States and other investment in insurance in force? I think it would be largely United States, but I am wondering how large it would be.

Mr. HUMPHRYS: We could analyse it by currency. The returns filed with us show the business in Canada and the business outside of Canada, but it is not classified by country; it is classified by currency. We could prepare a summary showing the total business in United States dollars, for example, which principally would be business in the United States, but it could be business in other countries in terms of United States dollars. We could prepare that tabulation for you.

Mr. MOREAU: Provided it is not too much work, I would appreciate having it.

Mr. HUMPHRYS: It would not be a difficult figure to obtain.

Mr. LLOYD: Might I ask for a very brief explanation why we must continue to distinguish between British companies and foreign companies?

Mr. HUMPHRYS: It arose from constitutional arguments in the past. This particular division between British companies and foreign companies was adopted when the insurance acts were amended or re-enacted in 1932 after the privy council decision in 1931 which held that certain provisions of the previous acts were ultra vires.

The new insurance acts were adopted in 1932 and a separate act was enacted for foreign companies in order to have it apply to aliens, whereas

the British companies were not considered by the law officers at that time to be in that class.

Mr. LLOYD: For all practical purposes, in respect of British companies and foreign companies controlled under this act, the control is the same?

Mr. HUMPHRYS: Exactly.

The CHAIRMAN: Are there any further questions on Part II of the Foreign Insurance Companies Act?

Mr. HUMPHRYS: To round out the information I gave about the distribution of business, I have some percentage figures here. Of the total insurance in force in Canada at the end of 1963, 65 per cent was transacted by Canadian companies, 5 per cent of which are under foreign control. So, there is 60 per cent for Canadian companies under Canadian control and 5 per cent for Canadian companies under foreign control; 29 per cent in respect of non-resident companies, which includes British and foreign, and a little over 4 per cent by provincial companies.

Mr. THOMAS: Does this act have any control over so-called provincial companies which Mr. Humphrys mentioned?

Mr. HUMPHRYS: There are a few provincial companies registered under this act. They were registered under the act many years ago, and registration has been continued. There is a provision in the statute enabling provincial companies to be registered under it, but no company has become registered under that provision for a great many years. I think there are four provincial companies now registered under the act, but they do so voluntarily. Therefore, amendments to this act having to do with corporate powers, for example, would not affect provincial companies, but amendments relating to investments would affect provincial companies so long as they continued to be registered under the act. Registration is voluntary.

Mr. LLOYD: Have you a record of insurance companies in Canada incorporated and operating under provincial statutes?

Mr. HUMPHRYS: I have a list of provincial companies.

Mr. LLOYD: I would appreciate having the statistics, but I do not need the names.

Mr. HUMPHRYS: They do a little over 5 per cent of the business in force in Canada. Among my papers I think I have a list of the companies. Perhaps it would be best that I look it up and give you the information at the next meeting.

Mr. LLOYD: I am advised that this information is in a report and I do not need to take your time. I will go to the library. I am told I have it in my own library, so I am humble and will direct my research in another direction.

The CHAIRMAN: Mr. Humphrys is going to give the four companies which are under provincial charter.

Mr. HUMPHRYS: There is the Continental Life, the Excelsior Life, the Maritime Life, and the Life Insurance Company of Alberta.

Mr. THOMAS: Is it possible for a foreign controlled company or a foreign company to come into Canada, register under a provincial jurisdiction and carry on business.

Mr. HUMPHRYS: The Foreign Insurance Companies Act prohibits it.

Mr. MOREAU: They could come in and incorporate a Canadian company under a provincial charter?

Mr. HUMPHRYS: Yes, they could do that. If the provincial authorities accept them, there is nothing in this which will prevent it.

The CHAIRMAN: Shall we move on to Part III on page 31?

Agreed.

The CHAIRMAN: While it is in my mind I would like to remind you that the Trust Companies Association of Canada will be here next Thursday and has a brief which has been distributed. If any member did not receive a copy, I will be glad to see that he gets one at the close of this meeting, or you might like to have it now.

Mr. HUMPHRYS: Mr. Chairman, Mr. Lloyd asked for information about provincial companies and I now have the information. At the end of 1963, our records show 18 provincially incorporated companies.

Mr. LLOYD: Does it show in what provinces their head offices are located?

Mr. HUMPHRYS: I am sorry—29 provincial companies of which four are registered with the department. It shows one in New Brunswick, 16 in Quebec, four in Ontario, one in Saskatchewan, one in Alberta and two in British Columbia, making a total of 25 which are not registered with the department and four more which are registered with our department. One is incorporated in Nova Scotia, two in Ontario and one in Alberta. Those are the figures as of the end of 1963. There may have been some changes since as some new insurance companies, I think, have been incorporated. At least one of the companies subsequently has reincorporated as a federal company.

Mr. THOMAS: In that connection has any action been taken to bring the provisions of this act into line with the provisions of the various provincial acts covering insurance corporations?

Mr. HUMPHRYS: I would not say that any special study had been given to that particular problem. In actual practice the statutes are not far apart. The provincial superintendents meet regularly in an attempt to achieve a uniformity in the insurance statutes of the several provinces. Representatives of the federal department usually attend those conferences so that we are aware of what the provinces are doing and the provincial superintendents are aware of what we are doing. The requirements are not far apart in actual practice.

Mr. MOREAU: What you are saying is that the federal statute more or less is a pace setter and the provincial authorities try to emulate the direction—at least in the past—that the federal department of insurance has taken?

Mr. HUMPHRYS: I think that has been part of the pattern, principally because a preponderance of the insurance business done in Canada has been done by companies registered with the federal insurance department, and thus subject to federal law.

Mr. LAMBERT: The other day I inquired whether there was any provision in the Insurance Act or in any of the acts under your jurisdiction which prohibited it being made a condition of investment in a mortgage that insurance be cancelled or that it be placed with a particular company. At that time I seemed to have taken you a little by surprise. Do you have the information at this time?

Mr. HUMPHRYS: We have raised the question with the Department of Justice, but as yet do not have a reply.

Mr. LAMBERT: I should point out that I think this is a salutary provision which exists in the province of Alberta, because I know I have been involved in cases in which there were prosecutions. I think it is a very salutary provision. This might be a point in which the Alberta act leads the federal act.

Mr. HUMPHRYS: In my reply to the query, I did not wish to cast any doubt on the appropriateness of the provincial acts in their own circumstances.

The CHAIRMAN: I will have another go at Part III. I am not being impatient, believe me, because the questions have been very pertinent. However, if there are no further questions on Part II, we will go on to Part III.

Part II clauses stand.

On Clause 26—*Corporate name in French or English form.*

Mr. HUMPHRYS: Part III proposes to enact amendments to the Trust Companies Act. The first clause would grant the governor in council a power to provide a company with a French or English version of its corporate name. This is the same provision as is included for insurance companies.

Mr. AIKEN: I suppose the actual supervision of this section will be carried out by the superintendent of insurance?

Mr. HUMPHRYS: We would administer it or take the same part in it as we do now where a company comes to parliament to seek an amendment to its act of incorporation to get a French or English version of its name. The practice is to come to the department with the suggested name. Then we usually have a search made by the office of the Secretary of State to see whether the name would conflict with the name of any other company. If the name is similar to that of another company, we suggest that the proposers contact that company to see whether there is any objection, so that by the time the matter comes to parliament for consideration any objections have been raised. We propose to follow the same pattern in this context. The notice required is similar to the notice required for a private bill.

Mr. AIKEN: I also would like to have information in this regard concerning a change of name; that is, the change of a French or English name beyond what currently is used. Is there any authority in this section to permit this?

Mr. HUMPHRYS: No; there is not any authority to change the basic corporate name of the company. The governor in council here is limited to granting a French version of an English name or an English version of a French name. If the company wish to have a change in its name, it would have to have its act amended.

Mr. AIKEN: This would not apply to any company which already has applied, I presume, to get both an English and a French name by special statute?

Mr. HUMPHRYS: No.

Mr. AIKEN: On several occasions in the past we have had changes in the French version where someone felt it was not a proper translation of the name. After an order in council has been made would there be authority to make a further change under this section?

Mr. HUMPHRYS: I think that if the governor in council had power to grant, say, a French version of an English name, it would have the power to change that version by changing its own order in council. I do not think it would have power to change a name that was granted by parliament.

The CHAIRMAN: Carry on.

Clause stands.

On Clause 27—*Qualification of directors.*

Mr. HUMPHRYS: The next clause deals with the qualification of directors of a trust company. At present, in order to qualify as a director, a shareholder must hold shares of a par value of at least \$2,500. The change would require the holding of shares of which at least \$500 has been paid as capital or credited as capital. The present requirement of shares having a par value of \$2,500 is quite a severe requirement and may sometimes require the investor of \$18,000 or \$20,000 to get enough shares to qualify.

The reduced requirement substantially would reduce the investment necessary, but still would require some considerable degree of share ownership to qualify. The \$500 requirement is the same as the requirement that is now in the Ontario act for trust companies.

Clause stands.

On Clause 28—*Shares.*

Mr. HUMPHRYS: The next clause would enable trust companies to subdivide the par value of their shares below the present minimum of \$10 down to a minimum of \$1.

Clause stands.

On Clause 29—*Definitions.*

Mr. HUMPHRYS: This clause in every respect is parallel to the clause which we discussed applying to insurance companies. This limits the non-resident ownership of shares of trust companies.

Mr. LAMBERT: What is the proportion of business done by trust companies in Canada as between companies registered under the Trust Companies Act with the government of Canada and those which are registered by provincial charter, and so on?

Mr. HUMPHRYS: The total assets of dominion trust companies at the end of 1963 amounted to \$427 million exclusive of estates, trusts and agency funds. For provincial companies, the corresponding figure was \$851 million. So in the trust field, provincial companies have about twice as much business as the federally incorporated companies.

Mr. LLOYD: Is this breakdown shown in the reports which we have available to us?

Mr. HUMPHRYS: In the reports published by the department of insurance, there is shown the business of provincial companies as compared with the business of federal companies.

The CHAIRMAN: Are there any further questions on clause 29?

Mr. HUMPHRYS: There are no federal trust companies now owned outside of Canada.

Clause stands.

On Clause 30—*Contents of report.*

Mr. HUMPHRYS: The next clause on page 38, No. 30, effects some changes in the terms of auditors reports in connection with statements of companies. At present auditors are required to state in their report whether in their opinion the statements are properly drawn up so as to establish a true and correct view of the state of the company's affairs. The change would require them to form an opinion of whether the statement exhibits a true and correct view of the state of the company's affairs, and of the result of the operations during the year, and not merely whether it is properly drawn up to do so. It expands the requirements slightly and requires the auditors to some extent to look at the operations of the year as well as the balance sheet.

The CHAIRMAN: I notice in the brief submitted by the Trust Companies Association there is a reference to clause 30. I do not know whether the committee, while Mr. Humphys is now before us, wishes to ask any questions in respect of the comment made by the Trust Companies Association.

Mr. LAMBERT: This is policy.

Mr. HUMPHRYS: I would be glad to comment on this.

The CHAIRMAN: I am not suggesting you should, but I draw this to the attention of the committee.

Mr. MOREAU: They appear to be asking for a year's grace. What is your feeling on that?

Mr. HUMPHRYS: We have had letters from the accountants asking that this be deferred. In putting forth this wording, we took it from the author's certificates that are now being submitted in respect of a substantial proportion of the companies. Therefore, it is not a wording that the department has de-

signed, apart from actual practice in the accounting field. We did not take the view that this is imposing any new pattern or requirement. We did not see that anything was going to change in the next year that would justify postponing the operations of the provision.

So far as the reports to the superintendent are concerned, the amendment here would reduce the requirement somewhat, because the auditor only would have to certify in respect of the assets, liabilities, income and disbursements, but would not have to certify to the detailed schedules, exhibits, and so on.

We in the department did not think the enactment of this at this time would impose a very heavy burden on the auditors.

Mr. LLOYD: In the representations which you have received from accountants on this matter, did they in any way detail the difficulties with which they would be faced?

Mr. HUMPHRYS: I would say that in general the representations were against any change until more time had been given for the accountants and others to discuss the exact wording of the amendments. They seemed to have some concern about the introduction of the phrase "the results of the operations of the company during the year." It came as a surprise to the department that anyone would have any objection to that, because before proposing those words we examined the auditor's certificates that are in fact being used, and this is a common phrase that has run through them. So, we did not think that in suggesting this it would pose any particular problem. We thought that the change was desirable in the interest of broader information in respect of the financial position of the company. That is not confining the certificate solely to the balance sheet.

Mr. LLOYD: I might suggest, Mr. Chairman, that this derives from two schools of thought. The matter of the results of operations being reported really developed in the practices in the United States, whereas the British practice was to confine the certificate to the statements, the end result. It is a controversial subject in respect of whether it should or should not be included. It would depend on the opinion of the solicitors who advise the accountants. I think I may suggest that when you have the witnesses before you from the trust companies, that perhaps they should be asked to explain this.

The CHAIRMAN: You will have this opportunity.

Mr. LLOYD: Do you expect any representations from the chartered accountancy organizations on this?

The CHAIRMAN: The Trust Companies Association will be here on Thursday.

Mr. LLOYD: But they will not be making representations themselves on behalf of the chartered accountancy organization?

The CHAIRMAN: I do not wish to make any presumptions, but we should wait until they are here.

Clause stands.

On Clause 31.

Mr. HUMPHRYS: Clause 31 deals with investment powers of trust companies. I may say that in respect of the trust companies, their investment powers are dealt with in three categories. The first relates to unguaranteed trust funds; these are funds received in trust, often referred to as estate, trust and agency funds. The second category is the guaranteed funds where the companies receive money in trust subject to a guarantee of repayment of the principal. The most common example is the deposit accounts that trust companies accept and the money received from the sale of guaranteed investment certificates.

Mr. MOREAU: Do you mean the trust companies presently do not have the authority to invest on deposit accounts? Is this change from the current practice to sort of authorize them to do what they are already doing?

Mr. HUMPHRYS: My remarks were by way of introduction to explain why there appears to be so much repetition in the investment provisions. The three categories are dealt with separately. Subclause (1) deals with the power to invest guaranteed trust funds and unguaranteed trust funds in mortgages and increases the mortgage limit from two thirds of the value of the real estate to three quarters.

Mr. GRAY: Mr. Humphrys, would you comment on this matter of the ability to lend on leasehold real estate, which has been requested by the trust companies in their brief and which was requested prior to the amendment.

Mr. HUMPHRYS: The trust companies under this act, in 1914, had the power to invest their own funds in mortgages on leasehold property, but they did not have the power at that time to invest trust funds in leasehold mortgages. In 1924 they were given the power to invest guaranteed trust funds in the same manner that they could invest their own funds if the deed of the trust so permitted. In their actual operation the terms on which they accepted deposit accounts included authority to invest in that way. So, from the amendments of 1924 they could invest guaranteed trust money in leasehold mortgages if the deeded trust so permitted, but they could not invest their unguaranteed trust funds in that way, unless the trustee gave them specific authority.

Then in 1947 there were extensive amendments to the Trust Companies Act and the power to invest in or lend on the security of mortgages on a leasehold property was removed. That is the state of affairs now.

Earlier this year, when consideration was being given to amending the Insurance Act, following the announcement of that intention in the budget speech, the insurance companies submitted a brief as soon as they learned that the act was going to be amended. One of the changes requested in the brief was this increase in the limit on mortgage loans to permit them to lend up to 75 per cent of the value of the real estate instead of only up to two thirds.

At that time there were no amendments to the Trust Companies Act and the Loan Companies Act intended, but the organizations representing these companies immediately made representations on this point saying that their principle business was investing in mortgages and if insurance companies received power to invest in mortgages up to the 75 per cent limit they felt it was absolutely essential they have it too, or they would be in a very weak competitive position.

On that basis the government agreed to bring in further amendments, but at that time there was not much time available; it was not considered that the legislative calendar was such that it could absorb extensive amendments to the Trust Companies Act and as a consequence the amendments proposed in this bill have been kept to the minimum requested by the companies at that time. Their requests at that time covered splitting shares, qualification of directors and a change in the limit on mortgages. That is as far as the amendments proposed went, but when they were being put forward, these other provisions were put in as part of a general pattern dealing with these companies.

That explains not only the point that you raise, but also the fact that the amendments in respect of investment powers here do not go quite as far as the amendments proposed for the insurance companies. As a consequence, in the department we did not make any particular study of the question of broadening the power to invest or lend on mortgages on leaseholds. The request that this change be made has been received only in the last ten days, or so, since the bill was introduced.

Mr. GRAY: So that the reason for not including it has been owing more to lack of opportunity—

The CHAIRMAN: I do not wish to appear to be interrupting, but I think we do not want to get the witness into a difficult position.

Mr. GRAY: I am trying to find out whether he has information, for example, whether provincially incorporated loan and trust companies have had a high loss record on this type of investment.

Mr. HUMPHRYS: I do not have information on that. I know provincial trust companies have the power to lend on the security of mortgages on leasehold property.

Mr. GELBER: In what percentage?

Mr. HUMPHRYS: Two thirds of the value of the real estate, I believe.

Mr. MOREAU: You do not have any immediate objection to the inclusion of leaseholds—perhaps that is not a fair question?

Mr. HUMPHRYS: I would hesitate to make a recommendation at this time in the light of the fact that this distinction has a long history in one way or another. There has been an absolute distinction at least since 1947, so I would feel that before the department could or should make a recommendation of that type to the minister or to this committee, we should go into the matter thoroughly in order to answer questions such as those which have been raised this morning. So far as the department is concerned, I do not feel this is the type of a change which should be made at the last moment in view of the fact that there has been a deliberate distinction in the statute for some years.

Mr. GRAY: Here is a body which is coming forward with a request for additional amendments. Whether we are in favour of them or not will depend on the information brought forward before the committee and the consideration we give to them. It occurs to me that this is a very serious matter which deserves our deep study.

The CHAIRMAN: They are coming before us and we will give them a very impartial hearing and will make our recommendation upon reflection. With great respect, may I suggest we should not be arguing this particular point at this time. We will hear them and they will be given every consideration, and we will make our independent judgment after we have heard all the witnesses.

Mr. HUMPHRYS: Of course, there is nothing in this bill that is changing that situation. The references to leaseholds here are incidental only. Insurance companies already have the power to lend on the security of leasehold real estate. This change gives them the power to invest in mortgages on leasehold real estate. So, it is only an incidental change. As a result, the distinction is not being aggravated or altered by these amendments.

Mr. LLOYD: But it perpetuates the distinction.

The CHAIRMAN: We should not get into the question of whether they should or should not. I think we should leave that until we have heard from our witnesses and perhaps after that you would have questions you would like to put to Mr. Humphrys.

Mr. LLOYD: I am anticipating then, if I may, the witnesses from the trust companies making representations to us in this respect, and I trust we will keep in mind the fact that C.M.H.C., in its recommendations to municipalities, in the field of urban renewal and redevelopment have been recommending leasing of the clear lands on a long term basis. Of course, this is increasing, you might say, the seeking of mortgage funds on leasehold properties. It may well be we are opening up a greater advantage for investment of this kind bearing in mind that C.M.H.C., a crown corporation, definitely has been recommending the use of leaseholds of jointly owned property, which is the residue

of an urban renewal program, and I would ask the members of the committee to keep this in mind when the trust company witnesses are before the committee.

The CHAIRMAN: Would you proceed, Mr. Thomas.

Mr. THOMAS: Mr. Humphrys, could you put on the record for us one or two examples in respect of what constitutes trust funds and what constitutes guaranteed trust funds.

The CHAIRMAN: Do you want him to enlarge on what he said in respect of the three types: the guaranteed, the unguaranteed and the company's own funds?

Mr. THOMAS: Yes, if he could give us one or two examples.

Mr. HUMPHRYS: Well, unguaranteed trust funds would be represented, for example, by an estate placed in trust for administration by a trust company, where the obligation of the trust company is to manage the affairs, make the investments and act with due diligence, but it does not guarantee the fund against investment losses nor does it guarantee any particular rate of investment return.

An example of guaranteed trust funds would be the savings deposits accepted by a trust company where the company guarantees repayment of the principal amount deposited and they also guarantee a specific rate of interest.

The company's own funds would be represented by the capital funds put up by the shareholders and also the profits earned by the company and still retained in the company—the shareholder's equity.

Mr. THOMAS: Thank you.

Mr. GELBER: I have gathered that actually there are three kinds of funds generally with which trust companies deal, their own funds, depositors' funds, and funds of estates they are managing. I presume that none of these restrictions refer to the third class.

Mr. HUMPHRYS: Estates that they are managing?

Mr. GELBER: Yes.

Mr. HUMPHRYS: They do. They are limited under the provision of the act dealing with the investment of unguaranteed trust funds. Bnt, the act specifically authorizes them to invest those funds in any way in which the deed of trust authorizes. So, the person establishing the trust can authorize the trust company to go beyond the provision of this statute dealing with the investing of unguaranteed trust funds; but if the trust deed is silent, then they are limited to investing them in accordance with the provisions of this act dealing with the investment of unguaranteed trust funds.

Mr. GELBER: There is nothing in the act to control the proportions of various types of assets. Am I correct in this assumption?

Mr. HUMPHRYS: Yes, there are provisions.

Mr. GELBER: Where would they be?

Mr. HUMPHRYS: It runs through the investment provisions in the statute, and in the amendments before us we will touch upon the limitation on common shares; the only amendment relates to the limitation on common shares. But, in the act there is also a limitation on investment in real estate for the production of income.

Mr. GELBER: Now, in respect of the second group, depositors' funds, I am very much concerned with the parallel drawn between trust companies and insurance companies and the fact that trust companies have depositors' funds subject to withdrawal. Would that not require certain guarantees of liquidity?

Mr. HUMPHRYS: Yes.

Mr. GELBER: And that would not be present when dealing with insurance company funds?

Mr. HUMPHRYS: Yes.

Mr. GELBER: What are these distinctions?

Mr. HUMPHRYS: There are no special liquidity requirements so far as insurance companies are concerned because their liabilities are not such as to require liquidity of assets. I am informed by Mr. Urquhart that there is nothing in the statute imposing liquidity requirements on trust companies. There is in the Loan Companies Act; they apply to deposits accepted by loan companies.

Mr. GELBER: But when we talk about advancing a certain percentage against real estate we certainly are tampering with the liquidity of trust companies' deposit accounts.

Mr. HUMPHRYS: I believe that there are in many respects different considerations applying to the investment of assets standing behind deposit accounts than might apply in the case of funds held by an insurance company. I believe, in practice, the assets standing behind deposit accounts, which are virtually demand liabilities, would have to be kept much more liquidated.

Mr. GELBER: How is that spelled out in the act?

Mr. HUMPHRYS: There are no special requirements in the Trust Companies Act on that point. In actual practice I am informed by Mr. Urquhart that companies maintain liquid assets behind their deposits of something of the order of 35 per cent or 40 per cent. We watch the figure. It is reported to us. If the situation developed to the point where the liquidity ran away down we would be concerned about it. But, it has not represented any problem.

Mr. GELBER: As you know, we are in a period of vaulting real estate values and we are increasing the percentages that can be advanced. I am wondering whether we should not go a little easy in terms of directing so much of the funds of these important institutions into real estate. Also, I am wondering, in view of problems that trust companies and banks have of immediate demand whether this should not be very carefully looked at. Someone the other day talked about 90 per cent of C.M.H.C. loans, which is hardly a rule for this type of company. But, as I understand it, your interest in this is purely administrative.

Mr. HUMPHRYS: Well, you cannot occupy a responsible job in the insurance department, charged with the responsibility of administering these acts and supervising the companies, without feeling very much concerned about the strength and financial solvency of the company. One cannot do the job merely by looking at the letter of the law. You must be concerned with the whole broad picture of the financial strength and stability of the companies because the whole purpose of the pattern of supervision is to protect the public so far as that can be done. So, in a sense, our interest is administrative but our broad responsibilities are to do everything we reasonably can do to make sure that all these companies are in a position to meet their obligations to the public.

Mr. GELBER: Would it assist you in this task to have some provision in this act restricting the discretion of companies holding deposit accounts in terms of investment against real estate?

Mr. HUMPHRYS: Well, I suppose I can answer that question by saying that from the point of view of the supervisor the tighter the investment rules the more comfortable he is; but the purpose of the legislation is not solely to make the supervisor comfortable. I think that in so far as investment provisions can be expanded without raising undue risk it is probably good policy to do so. Where the point comes at which the risk becomes undue is a question of opinion, and I do not know any way of determining it in any absolute degree. These amendments will expand the investment powers of trust companies by raising the limit on mortgages and the limit on investment of common shares, and by reducing the qualifications. I believe that in the light of current investment

practice and in the practice of amortizing mortgage loans that it is possible to make this increase without undue risk. But, it certainly does increase the risk, as I think inevitably happens, the more you broaden the investment rules. The broader the investment rules are the more one has to rely on the good management and the responsibility of those operating the companies.

Mr. GELBER: And, I presume, the more these institutions can invest in real estate and real estate securities the less they will have for equity stocks?

Mr. HUMPHRYS: Yes. Trust companies have not been heavy investors in equities in any event, except possibly in respect of their own funds. The proportion of guaranteed trust fund investment in common stocks has been quite small. They have made no investment of guaranteed funds in real estate properties at all although they do invest a fair proportion in mortgage loans. They had about 60 per cent of their guaranteed funds in mortgage loans at the end of 1962.

Mr. LLOYD: I would like you to reconfirm what I think you said in respect of deposits—that is, demand deposits, presumably, of trust companies which are now quite extensively getting into the business of using checking accounts. This is a subject that has occupied the attention of the royal commission on banking. Did I hear you say that they maintain a proportion of liquidity to support their deposits of demand liabilities?

Mr. HUMPHRYS: They do as a matter of practice, yes.

Mr. LLOYD: Is there any requirement that they maintain this?

Mr. HUMPHRYS: No.

Mr. LLOYD: This is purely a matter of self discipline in respect of the institutions themselves?

Mr. HUMPHRYS: That is correct.

Mr. LLOYD: The trust companies?

Mr. HUMPHRYS: Yes.

Mr. LLOYD: Mr. Chairman, I can see that much of this discussion will relate to our study of the Porter commission on banking, and I presume what we are doing at the moment is really a minor adjustment compared to the larger question being raised, that of policy, in respect of permitting investment of demand deposit funds by any lending institution in respect of mortgages and real estate.

Mr. HUMPHRYS: I believe that is a fair assessment of the situation.

Mr. LLOYD: We will have to have this before us when we are appraising the recommendations of the Porter commission.

The CHAIRMAN: I am unable to make any comment in that respect.

Mr. LLOYD: I think this will be a very challenging subject for this committee to study. But, I think more properly the questions raised, which are certainly very practical ones, by Mr. Gelber should be dealt with when we are examining the Porter commission recommendations, or whatever recommendations are forthcoming by the government in respect of this commission.

The CHAIRMAN: The members of the committee will have a further opportunity to put questions in this respect when the Bank Act is up. I do not believe the study of this bill will be long delayed, but we can deal with these points at that time.

Mr. LLOYD: Yes, we will be able to deal with whatever measures may arise from government action in respect of the Porter commission.

The CHAIRMAN: May I ask the witness to continue.

On Clause 31.

Mr. HUMPHRYS: We now come to subclause (1) of clause 31 on page 39, which enables the company to invest guaranteed and unguaranteed trust funds in mortgages up to a limit of three quarters of the value of the real estate instead of two thirds, as at present.

Subclause (2) raises the limit on investment of guaranteed trust moneys in common shares from 15 per cent of the fund to 25 per cent.

Subclause (3) on page 40, enables companies to lend unguaranteed trust moneys on mortgages, raising the limit from two thirds to three quarters of the value of the real estate.

Subclause (4) deals with the lending of guaranteed trust money and also increases the limit from two thirds to three quarters of the value of the real estate.

Clause stands.

On clause 32.

Mr. HUMPHRYS: Clause 32 deals with the investment of the companies' own funds in common shares.

Mr. MOREAU: In respect of clause 31 is there a proposed amendment by the trust companies? I do not know the section of the act to which they have reference but I think it is section 31.

The CHAIRMAN: Are you referring to the trust companies brief?

Mr. MOREAU: Yes. On the second page they have a clause 6.

Mr. HUMPHRYS: No. That relates to the ownership of subsidiary companies. It would, in part, be relevant in the discussion on the power to invest in common shares.

Clause 32, subclause (1) makes the same changes in regard to common shares as have been discussed for insurance companies; that is, the qualification is reduced from a seven year dividend record to a five year dividend record, and the earnings test is introduced. But, there is a limit of 30 per cent on the investment in the shares of any one company. So, this means that a trust company cannot, through this provision, own a subsidiary. Now, what the trust companies are asking for on page 2 of their brief is the power to own a subsidiary trust company outside of Canada, which is parallel to the amendment proposed for life insurance companies, which would enable them to own a life insurance company outside of Canada. They are also asking for the power to own subsidiary real estate companies, which also would be parallel to the power proposed for life insurance companies. In order to give them this power there would have to be an exception from this 30 per cent limitation.

Mr. MOREAU: Do I take it that the 30 per cent limitation on the shares of any one company is a protective device; in other words, the purpose is to try to force them not to spread their risk?

Mr. HUMPHRYS: It is intended to prevent the company from buying control of another company through purchasing its common shares.

Mr. MOREAU: Is it aimed specifically at trust companies or for any sort of operation?

Mr. HUMPHRYS: It was aimed at any sort of operation because there is a specific provision in the statute which says they may not invest in shares of other trust companies to any extent at all. The amendment broadens their powers slightly because the limitation now prevents them from investing in more than 30 per cent of the total issue of any stocks. So, the present limitation would apply to both preferred and common. The change would make it apply only to common shares.

The CHAIRMAN: Would you carry on, Mr. Humphrys.

Now, at the top of page 41, the change in paragraph (k) enables a trust company to invest its own funds in mortgage loans up to a maximum of three quarters of the value of real estate instead of two thirds.

Subclause (2) deals with the lending of the companies' own funds on real estate mortgages and again raises the limit from two thirds to three quarters.

Subclause (3) on page 41 repeals subsection (8) of the present section 68. That is a subsection that puts a limit on the total investment in common shares of guaranteed funds and company funds combined. There is a limit of 15 per cent. That is being repealed and the proposed limits are 25 per cent on guaranteed funds and 25 per cent on the companies' own funds. The limits apply separately.

Subclause (4) deals with the limit on the companies' investment of its own funds in common shares. At present it is limited to 25 per cent of its funds invested in common and preferred shares or lent on the security of shares. The change would replace these limits by one limit of 25 per cent on the investments in common shares. It is considered not necessary to put a limit on the lending on the security of common shares because another provision of the act requires a very broad margin of safety on the collateral.

Clause stands.

On clause 33—*Limitation of amount.*

Mr. HUMPHRYS: Clause 33, at the top of page 42, deals with a limit on the borrowing powers of a trust company. And, in speaking of borrowing powers I include within that power to accept money on deposit from the public and accept money by the sale of guaranteed investment certificates. At the present time, companies are limited to borrowing a maximum of $12\frac{1}{2}$ times the capital and reserve of the company. The capital and reserve is practically the same as the excess of the assets of the company over its liabilities. This amendment proposes to enable the companies to borrow up to 15 times the excess of assets over liabilities subject to the enactment of an appropriate bylaw and approval by the treasury board on the recommendation of the superintendent.

The purpose of a borrowing limit is to ensure that the company retains some excess of assets over liabilities. If a company were permitted to borrow, say, 100 times its capital and reserve then a one per cent drop in asset values would mean these assets were not sufficient to cover its liabilities. So, the problem is to determine a suitable limit. In respect of the history of this, going back to 1914 the borrowing power was five times the capital reserve, it was increased to 7 times in 1931, 10 times in the late 1940's and $12\frac{1}{2}$ times in the late 1950's. This proposal would increase it to 15 times. Now, if a company has the power to borrow 15 times its capital reserve it means that it would have a safety margin of $6\frac{1}{4}$ per cent of its assets. I think this can be illustrated by an example. If a trust company has, say, \$1 million of capital and surplus then under a 15 times rule it can borrow \$15 million. Its assets then would be \$16 million, \$1 million from the capital and surplus and \$15 million from the borrowed money. Its liabilities would be \$15 million owed to the public and it would have capital and surplus of \$1 million. So, if the asset value shrank by \$1 million, or one sixteenth, that would wipe out the capital and surplus. One sixteenth is $6\frac{1}{4}$ per cent. So, you can see that the 15 times rule ensures a margin of assets over liabilities of $6\frac{1}{4}$ per cent.

Mr. GELBER: It is not the ratio you can borrow which concerns me but what it is allowed to do with these funds.

Mr. HUMPHRYS: That is correct. The chance of investment losses, of course, depends upon the nature of the investments and it also depends upon the economic times, and perhaps upon the pressure on the company for withdrawal of deposit funds and matters such as these. So, it is not possible to rely solely on a maximum limit. Yet, the existence of a maximum limit is of some value.

As respects the changes in the borrowing limits of trust companies that have been made in the past, the new limit has been written in without any requirement of treasury board approval. Under this proposal any increase above $12\frac{1}{2}$ times would be subject to approval by treasury board on the recommendation of the superintendent, so that opportunity would be given to examining the assets portfolio of the company and its management and investment record before authorizing the increased borrowing power.

Mr. LAMBERT: But there is no provision for a limitation or a restriction from 15 back to $12\frac{1}{2}$? Is this approval, once granted, irrevocable, or is there a periodic review of the certificate in the same way as under the Insurance Act?

Mr. HUMPHRYS: There is an annual licence or certificate issued and the position of the company is reviewed annually. It is within the power of the minister to insert any necessary conditions.

Mr. LAMBERT: For instance, the minister can say: "you are up to 15 and we think it is unsafe." Or, he could say: "Due to certain economic conditions we had better go back to $12\frac{1}{2}$."

Mr. HUMPHRYS: I believe such would be within the power of the minister.

Mr. THOMAS: I would like to ask Mr. Humphrys the same question I put in regard to the insurance companies. Do the federal and provincial authorities work together with a view to seeking uniformity of the regulations controlling trust companies?

Mr. HUMPHRYS: There is no formal pattern of communication or co-operation between the federal department and the provincial departments but there are many informal exchanges, and the general pattern of the requirements are kept substantially in line, although I would say that generally the requirements applicable to the federal companies are more severe than those applicable to the provincial companies.

Mr. THOMAS: Can you tell us then, Mr. Humphrys of any provinces that permit a greater ratio than $12\frac{1}{2}$ times?

Mr. HUMPHRYS: Until recently the provincial statutes did not have a specific limit, but Ontario, in authorizing trust companies to operate in the province, generally followed the provisions in the federal act. More recently, Ontario has inserted a $12\frac{1}{2}$ times limit in its own statute.

Subclause (5) enacts a further limitation on the borrowing power of a trust company. It applies where a trust company owns more than 10 per cent of the shares of a loan company within the meaning of the Loan Companies Act or where more than 10 per cent of the shares of the trust company are owned by a loan company subject to the Loan Companies Act. This provision is proposed principally to deal with the parent-subsidiary relationship. In the absence of this provision, which I will refer to as the consolidation rule, two companies in a parent-subsidiary relationship could borrow substantially more on a given capital base than is intended by the operation of the normal borrowing limit. This could occur by the parent company issuing or selling shares to the public and using the proceeds of that sale to buy more shares in its subsidiary. Then the capital of both companies would increase. Their borrowing limit would rise. At least, the total amount they could borrow would rise by a multiple of the increase in the capital, so that each of them would be able to borrow up to the limits specified on the basis of the one amount of capital paid into the companies. So, this consolidation rule would require the company—and I am taking it in terms of a trust company—to discontinue borrowing if the total amount borrowed by the trust company and its parent loan company exceeded or if the borrowing would cause that total to exceed the amount that the trust company could borrow if its assets were the consolidated assets of the two companies and its liabilities were the consolidated liabilities.

Mr. MOREAU: Am I correct in stating that this is to prevent the dangerous pyramiding of capital.

Mr. HUMPHRYS: Yes. Another illustration would be where a loan and trust company are under common ownership. One company could increase its capital and the proceeds could be paid into the other company. So, without this consolidation rule it would be possible to double the borrowing on any given amount of capital paid into the enterprise.

Mr. GELBER: This would be taken into consideration when the Bank Act revision comes up, or an application for a new charter is considered?

The CHAIRMAN: I wish you would not put questions in that connection because I cannot say anything at all in that respect. We are on subsection (5).

Mr. THOMAS: All we can say is that these matters have been raised by Mr. Gelber and they could be brought up in connection with the report of the committee.

The CHAIRMAN: Yes, that would be all right.

Mr. THOMAS: That is, if it is felt that any warning is justified.

Mr. LLOYD: Supplementary to that, Mr. Chairman, the role of this committee is to examine the policies inherent in these things and the explanation so far really is a modification of a basic policy which is now in existence. I do not think these things really can be challenged until we take an over-all look at the relationship of the central bank of Canada with the chartered banks and so-called near banks. That is where the full meaning of these various operations would be borne upon us. I think this is what Mr. Thomas has said.

The CHAIRMAN: Clause 33 is an important section, and I only say that because of what went on before the Senate banking and commerce committee. I was in attendance there when the World Mortgage Corporation was being reviewed, and I think this section was aired very thoroughly and discussed at that time.

Mr. HUMPHRYS: I would like to add it may seem unnecessary to deal with the parent-subsidiary relationship when companies are limited to investing not more than 30 per cent in the shares of any other company. But, there are now in existence two cases where loan companies own subsidiary trust companies; these cases were in existence at the time the 30 per cent rule was adopted in 1922. There is also a bill now before the House of Commons which seeks to incorporate the World Mortgage Company and the bill as passed by the Senate gives that company power to own shares in the Eastern and Chartered Trust Company and sets aside the 30 per cent limit and other limitations in the Act. There is also an amendment that is before this committee having to do with this bill, which was tabled at the beginning of the proceedings, that would give general power to loan companies to own subsidiary trust companies. That amendment will be dealt with in part IV, having to do with the Loan Companies Act. This consolidation rule is a matter that requires the consideration in this connection.

Clause stands.

On Clause 34.

Mr. HUMPHRYS: Clause 34 deals with the Loan Companies Act. Clause 34 grants to the governor in council the power to provide a company with a French or English form of its corporate name so that a loan company would not have to seek an amendment to its act of incorporation for such purpose.

Clause stands.

On Clause 35—*Qualification of directors.*

Mr. HUMPHRYS: Clause 35 deals with the qualifications of directors, and effects the same change as effected for trust companies.

Clause stands.

Clause 36 stands.

On Clause 37—*Definitions. "Corporation"*

Mr. HUMPHRYS: Clause 37 deals with the non-resident ownership of shares and again is parallel to the clause proposed for the trust companies and life insurance companies.

Clause stands.

On Clause 38—*Contents of report.*

Mr. HUMPHRYS: That brings us over to page 50, to clause 38, which is an amendment to the requirements for an auditor's certificate in the same terms as the amendment for the trust companies.

Mr. MOREAU: We have not heard any similar requests coming from loan companies to defer this for a year?

Mr. HUMPHRYS: No. But I should say that the loan companies association has indicated to the department their desire also to have the benefit of any amendments that may be granted to the trust companies—in so far as they may be applicable to loan companies.

Clause stands.

On Clause 39—*Common shares.*

Mr. HUMPHRYS: Clause 39 on page 51 effects the same amendment relating to common shares, that has been discussed. It reduces the seven year dividend requirement to five. It also changes the 30 per cent limit, so that it applies to common shares only rather than to all shares.

Paragraph (f) on page 51 broadens the power of a loan company to invest in real estate mortgages by raising the limit from two thirds of the value of the real estate up to three fourths.

Subclause (2) deals with the power to lend on the security of real estate mortgages, and also raises the limit from two thirds up to three quarters.

Subclause (3) on page 52 raises the limit on investment in common shares from 15 to 25 per cent of the company's funds. That limit applies only if the loan company is accepting money on deposit from the public. If they are not accepting money on deposit, then there is no limit on the investment in common shares.

At this point there will be inserted the amendment I referred to, which would give the loan companies the power to own subsidiary trust companies, subject to certain limitations; that is to say, they could not invest in a trust company more than an amount equal to the capital and reserve of the loan company; so that they would not be, by this amendment, able to borrow money to capitalize a subsidiary.

Mr. GELBER: But they could invest their own funds?

Mr. HUMPHRYS: Yes. But it is important, if this general power is granted, to adopt the consolidation rule limiting the total borrowing; otherwise it would be possible to extend the volume of borrowing beyond the limits intended by the normal borrowing limit.

Clause stands.

On Clause 40—*Limitation of borrowing powers.*

Mr. HUMPHRYS: The present clause 40 extends the borrowing powers of a loan company up to a maximum of 15 times the excess of its assets over its liabilities. At present the companies have the power to lend four times; and then they can go up to $12\frac{1}{2}$ times with the enactment of an appropriate by-law, subject to the approval of the governor in council on the recommendation of the treasury board. This amendment would enable them to go up to 15 times,

but the approval is placed in the hands of the treasury board on the recommendation of the superintendent, rather than in the hands of the governor in council on the recommendation of the treasury board.

Mr. THOMAS: In respect of this clause, why do they use the language of four times the excess of the assets of the company over its liabilities, while in the past the companies have used the words $12\frac{1}{2}$ times?

Mr. HUMPHRYS: This distinction has been in the act since 1927. At that time the trust companies were limited to five times their capital surplus, and loan companies to four times. Loan companies asked for an increase, and the amendment of 1927 granted them an increase to six times, but it imposed the requirement that the increase would be subject to approval by the governor in council. I believe that the reason for that requirement was that there had been some failure of loan companies in 1917. I believe in 1919 there was another company in serious financial condition, and a great deal of controversy was taking place in connection with it. I refer to the Great West Permanent Loan Company, which was discussed before parliamentary committees at some length. I can only think that in the circumstances it was felt that any increase in the borrowing power of loan companies should be subject to extra safeguard. There was also the question of protecting the rights of debenture holders. At that time some loan companies had debenture holders outside Canada, particularly in England and Scotland. The amendment included a requirement for notice to debenture holders before an increase in borrowing was granted. That was the origin of this requirement in the Loan Companies Act. Since that time any increase in the borrowing limit above four times, has followed the same pattern and is subject to the approval of the governor in council.

In the case of trust companies, the increase from five to seven times in 1931 was not accompanied by any of these safeguards. The same applies to the increases in the late forties and late fifties. However this amendment enabling trust companies to go above $12\frac{1}{2}$ times will impose this same requirement for the approval of government authority. I believe the difference was historic. I believe that at the time the trust companies were more secure, so the safeguard was not apparently considered necessary then.

Mr. THOMAS: We understand that if a trust company wishes to extend the limit of $12\frac{1}{2}$ times the excess of its assets over its liabilities, they can be controlled by the superintendent of insurance.

Mr. HUMPHRYS: Yes.

Mr. THOMAS: And if a loan company wishes to borrow beyond four times the excess of their assets over their liabilities, they can be controlled anywhere above four times?

Mr. HUMPHRYS: That is right.

Subclause (3) on page 53 applies the consolidation rule to loan companies in the same terms as in the previous part.

Clause stands.

On Clause 41—*Limitation on holding of land.*

Mr. HUMPHRYS: Clause 41 at the foot of page 53 effects a technical change only, clarifying the power of a loan company to hold real estate that it has purchased as an investment pursuant to the power to invest in real estate for the production of income.

Mr. Urquhart has called my attention to the fact that I made a statement earlier that trust companies were prohibited from investing in the shares of other trust companies. He informs me that is not correct. There is such a provision respecting loan companies but not trust companies.

The CHAIRMAN: There is no limit on the amount?

Mr. HUMPHRYS: There is a 30 per cent limit.

Mr. LAMBERT: But a loan company cannot own up to 30 per cent of another loan company?

Mr. HUMPHRYS: No; it cannot own any shares of another loan company.

The CHAIRMAN: Gentlemen, that concludes the explanation of the bill. Clause stands.

If it is in order, I will accept a motion to adjourn.

Mr. MOREAU: On the assumption that we may be able to have Mr. Humphrys back after we have heard other witnesses, I would move that we adjourn.

The CHAIRMAN: We will meet on Thursday at 10 o'clock at which time we will hear the Trust Companies Association of Canada.

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(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964

STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

(THURSDAY, NOVEMBER 12, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESSES:

(Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association
of Canada; Mr. E. B. L. Miller, Huron and Erie Mortgage Corporation;
Mr. J. W. Rose, Canada Permanent Mortgage Corporation; Mr.
Richard Humphrys, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Gelber	McLean (<i>Charlotte</i>)
Armstrong	Grafftey	Monteith
Asselin (<i>Notre-Dame-de-Grâce</i>)	Gray	More
Basford	Grégoire	Moreau
Bell	Greene	Munro
Blouin	Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Jewett (<i>Miss</i>)	Otto
Caouette	Jones (<i>Mrs.</i>)	Pascoe
Chrétien	Kindt	Rynard
Côté (<i>Chicoutimi</i>)	Klein	Scott
Douglas	Lambert	Tardif
Frenette	Leblanc	Thomas
Flemming (<i>Victoria-Carleton</i>)	Lloyd	Vincent
	Macaluso	Wahn
	Mackasey	Whelan
	McCutcheon	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 12, 1964.

(13)

The Standing Committee on Banking and Commerce met at 10.35 a.m. this day.

Members present: Messrs. Aiken, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Habel, Lambert, Lloyd, Mackasey, Moreau, Munro, Otto, Pascoe, Pennell, Thomas—(13).

In attendance: Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association of Canada; Mr. E. B. L. Miller, Huron and Erie Mortgage Corporation; Mr. J. W. Rose, Canada Permanent Mortgage Corporation; Mr. Richard Humphrys, Superintendent of Insurance.

In view of the unavoidable absence of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman. On motion of Mr. Lambert, seconded by Mr. Gelber, it was

Resolved,—That Mr. Moreau take the Chair as Acting Chairman.

The Acting Chairman thereupon took the Chair and the Committee resumed consideration of Bill C-123, *An Act to amend certain Acts administered in the Department of Insurance*.

The Acting Chairman introduced Mr. Nelson, who, in turn, introduced Mr. Rose and Mr. Miller.

Mr. Nelson then summarized his brief, which dealt chiefly with Clauses 6, 30, 31 and 32 of the Bill. Copies of the brief had previously been distributed to members of the Committee.

During the meeting, the Chairman, Mr. Pennell, took the Chair.

Messrs. Nelson, Miller and Rose were questioned.

And the questioning continuing, at 11:15 a.m. the Committee adjourned until 3.30 p.m. this day.

AFTERNOON SITTING

(14)

The Committee reconvened at 3.30 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Klein, Lambert, Lloyd, More, Moreau, Munro, Nugent, Pennell, Tardif, Thomas, Wahn, Whelan (17).

In attendance: The same as at the morning sitting.

The Committee resumed questioning of Messrs. Nelson, Rose and Miller. Mr. Humphrys was also questioned.

At 4.15 p.m., the questioning having been concluded, the witnesses were permitted to retire, and the Committee adjourned until Tuesday, November 17, 1964, at 10.00 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, November 12, 1964.

The CLERK OF THE COMMITTEE: Gentlemen, you have a quorum, but no Chairman. May I receive nominations for an Acting Chairman?

Mr. LAMBERT: I move that Mr. Moreau be invited to act as Chairman.

Mr. GELBER: I second the motion.

Motion agreed to.

Mr. MOREAU (*Acting Chairman*): My intelligence tells me that I will be the shortest lived chairman on record. However I hope we will not waste any more time. Now, gentlemen, we have a quorum, and again we are dealing with Bill No. C-123. We have members present from the Trust Companies Association of Canada. I might say first of all that I do not know any of these gentlemen except Mr. Nelson, so I shall now ask him to introduce the other representatives of his association.

Mr. E. F. K. NELSON (*Executive Director, The Trust Companies Association of Canada*): Thank you, Mr. Chairman. These gentlemen are not members of any deputation. I am the deputation, but Mr. Rose is here from the Canada Permanent Mortgage Corporation, and Mr. Miller is here from the Huron and Erie Mortgage Corporation. They are making themselves available to the committee should you wish to ask any questions concerning loan companies.

The ACTING CHAIRMAN: Mr. Nelson, would you care to proceed with your remarks, perhaps, in an introductory way, to your brief, and then we might open the meeting to questions?

Mr. NELSON: Thank you, Mr. Chairman. If I may I would first like to express the appreciation of the Trust Companies Association of Canada to the committee for your hearing our representations on the bill this morning. As a matter of fact, I should be able to complete our comments very quickly and not take up too much of your time. May I proceed with my summary?

The ACTING CHAIRMAN: Yes, I think that would be the best way for you to outline generally what it is you are trying to accomplish or that you wish us to do.

Mr. NELSON: First of all the association has carefully studied Bill No. C-123, and finds no objection to the principles contained in it. In fact, the association welcomes many of the amendments which the bill proposes to the Trust Companies Act. On behalf of our federally incorporated member companies, the association itself wishes to place a number of points before the committee and to solicit your consideration of them. There are actually, I think, five points.

Mr. OTTO: Mr. Chairman, I notice that our Chairman has now arrived. Is there a motion to change chairmen?

(The Chairman of the committee, Mr. Pennell, assumed the Chair at this point.)

The CHAIRMAN: Gentlemen, I apologize to you and to the witnesses for being late. I have been travelling since ten minutes to one this morning in order to be on time. I do not suppose anybody here left home earlier than I did. However my flight was delayed, so I had to complete my journey by train, and I apologize for being late. Please continue, Mr. Nelson.

Mr. NELSON: The first point concerns trust company investment in mortgages on leaseholds. I would simply point out that federally incorporated trust companies are one of the few kinds of financial institutions which cannot do this. The power I believe is available to life insurance companies, to federally incorporated loan companies, and to provincially incorporated loan companies. It is perhaps of considerable importance to federally incorporated trust companies because the fact is that of some 50 trust companies in Canada while only seven are federally incorporated these seven find themselves alone in lacking these particular powers.

There are areas in Canada, notably in my own native city of Saint John, New Brunswick, where leaseholds are quite common, going back to royalist days, and where in the business district of the city much of the real estate used by commercial business is leasehold. It is awkward and sometimes embarrassing for the federal companies to have to decline mortgages which their competitors may accept, and do so commonly. I think that is about the only point I want to make about it. Do you wish me to continue with the other four points?

The CHAIRMAN: If the committee wish you to complete your presentation before questioning, then all right.

Mr. NELSON: I presume our small memorandum has been distributed.

The CHAIRMAN: Yes, it has. That is right.

Mr. NELSON: The second point finds its origin in clause 6 of the bill where certain powers are given to life companies. On behalf of our federally incorporated member trust companies we are asking for consideration of similar powers for them. One is the right to invest in fully paid common shares of a trust company incorporated outside of Canada; and the other is to invest their own funds in both cases, of course, for fully paid common shares of the corporation. As we have described it, it is: "Any corporation incorporated to acquire, hold, maintain, improve, lease, manage or act as agent for the purchase, sale or lease of real estate as leaseholds." This, of course, would be subject to such terms and conditions as may be prescribed by the treasury board upon the report of the superintendent.

I may say here that it is not the desire of the companies to seek any new powers. I believe I am correct in saying that under their agency powers or agency capacity they may do all these things. It would be more convenient and it would be helpful to them if they could use this method in dealing with many of their real estate transactions on an agency basis. I should say we are not asking for a way to acquire powers which are not given in the act; that was not the purpose of the representation. Again, the federally incorporated companies face the situation that many of their trust company competitors incorporated under provincial authority have these powers.

The third point, or really the fourth point, concerns the eligibility requirements of certain corporate investments. Here, on behalf of our federally incorporated members, we are asking that consideration be given to amendment of the eligibility requirement for preferred shares, debentures, or other evidence of corporate indebtedness to parallel what is proposed in respect of the powers of the life companies in Part I of the bill. I might simply suggest here that if the trust companies are permitted to buy the common shares of a corporation under the rules proposed in the bill, it seems reasonable that they should be able to buy the preferred and debt securities of the same company. I might give one example which is a fairly recent thing. The Union Carbide shares, I believe, now would be under the proposal eligible for federally incorporated trust company investment. If that company were to issue preferred shares, we would not be able to buy them except under the basket clause, as I understand it.

The final point is one relating to clause 30 of the bill. It concerns the items affecting the auditors' certificates. We have no objection to this. The concern of the companies involved simply is that it is very late in the year and should this bill be passed before the end of the year and become law, I am told it would be quite awkward both for the companies and their auditors. Much of the basic groundwork, preparation of working papers, and so on, often has been done by the auditors. I think there probably has to be some consideration of the difficulties that are contained in this.

We simply have asked that this might be made effective the first of January, 1966. This would mean that the companies and their auditors would have that much of a breathing space to determine their lines of approach to it. However, there is no objection to the proposals.

That, Mr. Chairman, completes my small presentation this morning.

The CHAIRMAN: Thank you, Mr. Nelson. Before the questioning starts, may I say that if you feel any of your associates might answer any questions, they are at liberty to do so. I have recognized Mr. Aiken as being first on my list.

Mr. AIKEN: Thank you, Mr. Chairman. Just to round out the presentation, there was one point which was not commented on which has been raised in the committee namely, the proposal to raise the percentage on mortgages on real estate from two thirds to three quarters. I have expressed some concern about it. It is not in your brief, but I would very much like to have your opinion.

Firstly, are provincial trust companies now permitted to lend up to two thirds in most provinces as far as you are aware?

Mr. NELSON: Yes, they are.

Mr. AIKEN: Are there any jurisdictions that have raised it beyond that?

Mr. NELSON: I do not think there is any restriction in the Quebec act as to the ratio of loan to value. I believe in the Ontario act the amendment is relatively recent. Before that there was no limitation, but I think that in the early sixties it was moved to 66⅔, and I think that is general where there is such a provision.

Mr. AIKEN: I understand that your association has no objection to raising it to three quarters?

Mr. NELSON: No.

Mr. AIKEN: Do you want it raised?

Mr. NELSON: Yes, we do want it raised. I think our reasons are principally competitive. As you understand, in the mortgage market if you cannot lend as much as other responsible institutions may lend, you are in a competitive difficulty. This is our principal reason for seeking it.

Mr. AIKEN: My concern is entirely different, that perhaps it is not good trust practice. Are you not getting beyond the safe measure for trust securities?

Mr. NELSON: I would think that trust companies are pretty conservative in their approach to these things. They would examine with considerable care requests for 75 per cent mortgages and would not be inclined to take undue risks with them.

Mr. AIKEN: Do you expect that this may be an outside limit which the trust companies will only use in very rare circumstances?

Mr. NELSON: Perhaps I might answer that question in this way. We asked for 75 per cent only after it had been announced that it was the intention of the government to make this provision for life companies who are, I believe, considerably larger in terms of mortgages than the trust companies, and it was then that we asked that we might have the same power.

Mr. AIKEN: You have more or less been driven to it by force of circumstances rather than by judgment.

Mr. NELSON: I do not know whether I can put that interpretation on it, but certainly we did not ask for any increase prior to that occasion.

Mr. AIKEN: I have just one more question. Do you feel that if the power were not granted to life companies you would be satisfied to have the ratio left at two thirds?

Mr. NELSON: I think it goes beyond the life companies, but I rather suspect they were in somewhat the same position because there are, I believe, other agencies which do not have these restrictions put on them and which had been making use of their right to lend at higher ratios. I would therefore assume that that was one of the factors that motivated the life officers' association in their interest in this subject.

Mr. AIKEN: So it is more a case of competition than good trust practice?

Mr. NELSON: I do not think that is the sole factor. I certainly would not expect that a trust company would lend 75 per cent on every mortgage application. It would certainly scrutinize it very carefully. That would be the normal custom, regardless of the percentage, but I do not think that the trust companies themselves would consider the right to lend up to 75 per cent would necessarily lead to any imprudent action on their part, and they would guard against that and would do so effectively.

Mr. LAMBERT: Do the trust companies engage in this first and second mortgage lending that is now becoming a practice with certain lending agencies?

Mr. NELSON: A number of trust companies have.

Mr. LAMBERT: With this force of competition do you not think, Mr. Nelson, notwithstanding all the good will you may exhibit at this time, that if you are granted a ceiling of 75 per cent you will soon be pushed to the ceiling.

Mr. NELSON: I wonder whether I might call upon one of the representatives from the mortgage corporations who might perhaps better answer that.

Mr. E. B. MILLER (*Huron & Erie Mortgage Corporation*): As I understand it, the basic concern is whether or not loans become more vulnerable and, accordingly, whether the depositors' money in loan companies or trust companies might acquire a degree of risk because of raising the loan to value ratio to 75 per cent.

In this sense I do not think anyone can give you a complete answer, but I think there are two considerations that are important. One is that in the past 30 years the repayment schedule on mortgages has changed completely. Mortgages are now repaid almost entirely on a monthly basis. This monthly repayment plan probably is one of the most important developments that has taken place in the mortgage business in two senses; in the first sense because the mortgage company is able to watch the capacity of the borrower to meet the payments much more regularly; and in the second sense because where the borrower is having to make his repayment on a monthly basis he is able to budget much better than when the more common practice was to repay mortgages on a semi-annual or annual basis. This is one of the developments.

The other development I think relates to the C.M.H.C.—the National Housing Act loans. In this case, of course, the loan to value ratio is even considerably higher than this, and I have no doubt that the government of the day very seriously considered this problem of loan to value ratios at that time and determined that it was not unreasonable to lend greater amounts on value.

Does that answer your question?

Mr. LAMBERT: No, it does not really answer it really, Mr. Chairman.

What I am concerned about is that with this now going practice of one plus two or first and second mortgages, with the lower rate, the two thirds rate, the trust companies and the other lending agencies such as life insurance companies could quite legitimately refuse a borderline case by merely pointing out the legal limitation at the present time. If it goes up to 75 per cent they will be pushed to 75 per cent and then they will have nothing but their own judgment decision to back them up.

Mr. MILLER: But that judgment decision is taken regularly. Even when we were at 66 $\frac{2}{3}$ per cent loan to value ratio it did not mean that all our loans were made at the 66 $\frac{2}{3}$ per cent.

It is obvious that the management of the companies do not wish to take on loans which may go sour, and accordingly they screen the credit behind the loan, not only the security but the credit worthiness of the borrower.

The other point is that in many cases with the 66 $\frac{2}{3}$ per cent loan we were quite aware that the borrower was going out and getting a second mortgage and a third mortgage, and possibly even borrowing from a bank to raise sufficient funds to buy the property.

Accordingly, his repayment program on that basis could be quite onerous, and if through the first mortgage loan to value ratio being increased you were able to improve the capacity of the borrower to meet his repayment schedule then this could be a good thing.

Mr. LAMBERT: That is all I have on this particular subject, Mr. Chairman.

The CHAIRMAN: I have Mr. Otto next on the list.

Mr. OTTO: I know some of the members of the committee are concerned about the risk element in lending up to 75 per cent of the ratio. In your experience, has it not been true that in almost all cases the value of the land and the buildings has grown much more quickly than, say, the defaulting interest, even in cases of default? In other words, is it not true to say that in respect of investment in land today, regardless of the risk, in 10 or 15 years time it always will prove to be profitable.

Mr. MILLER: I wish I could answer that by a firm yes, but no one knows. I think it is true to say that there is a long term inflationary trend, but if you tried to pinpoint it to 10 or 15 years no one could guarantee that the land or real estate values 10 years from now would be higher than they are today. Looking forward into the future, certainly, they will be.

Mr. OTTO: I am thinking of the experience of the last 50 years, let us say. I recall the Great West Life was stuck with a considerable number of homes in 1946 and 1947 in Winnipeg. These homes, I believe, were seized or foreclosure proceedings were taken, with a realization of \$6,000, and now they have been disposed of at a value of around \$23,000 or \$24,000. So, to me, that would indicate regardless of the ratio that it is as good an investment as any other commodity today.

Mr. MILLER: Oh, yes, I would think so.

Mr. OTTO: I would ask Mr. Nelson to answer my last question.

In respect of leaseholds, you say that provincial trust companies and life insurance companies have the power at the present time to invest.

Mr. NELSON: Yes.

Mr. OTTO: Is there much of this type of investment or mortgaging?

Mr. NELSON: I would have little idea as to the proportion. I think it would be much smaller than freehold, although it does exist quite heavily in certain parts of the country.

Mr. OTTO: It does exist.

Mr. NELSON: Yes, it does. I mentioned my native city of Saint John. It is quite an important factor in the King street area where the main business is carried on.

Mr. OTTO: In that connection I am wondering whether it would be possible in respect of a company that has the power to lend on leaseholds as well as on land for the figure actually to go over the 75 per cent. For instance, if the land is leased for 50 years it shows a definite value for a period of 50 years; consequently, the value of the land itself increases quite sharply, and if you have another mortgage on the building, then it is conceivable that in staying within the 75 per cent limit on both you might get to 90 per cent or 100 per cent of the actual value?

Mr. NELSON: I will refer that to my colleague. Did you hear the question, Mr. Miller?

Mr. MILLER: I am sorry but I did not.

Mr. NELSON: The question related to mortgages on leaseholds. Perhaps I should not attempt to repeat the question.

Mr. OTTO: I will put it to you specifically. In the event and, of course, in the cases where companies do have the right to lend money on leasehold as well as on freehold would it be possible, or has it happened, that the 75 per cent limit has been stretched by evaluating the land which is leased at a much higher value because of an established lease, as a result of which 75 per cent of the land and 75 per cent of the building, in actual fact, would be more than 75 per cent of the value of the property today.

Mr. MILLER: I would not think so. But, I must qualify that by saying that we have done very little in the way of leasehold lending. It is becoming a more prominent practice, but my experience just is not sufficient to be able to answer you properly in that connection.

Mr. OTTO: Those are all the questions I have.

The CHAIRMAN: Gentlemen, I propose to go until 11.15. I realize there is a caucus meeting this morning. Mr. Nelson and Mr. Miller were made aware of that fact, and it was thought that we could meet this afternoon. At the last meeting it was my understanding that all parties would be having caucus meetings today, but I do not know whether or not that is true.

The government caucus is continuing. I trust we may go until 11.15 a.m. and then return after orders of the day, or 3 o'clock, whichever is first.

Mr. AIKEN: If necessary?

The CHAIRMAN: Yes, if necessary. But now let us carry on. I have Mr. Lloyd.

Mr. LLOYD: Mr. Miller, questions are directed to you on the subject of leasing and mortgages to the extent of 75 per cent. Would this not give you an opportunity on a selected basis to extend your mortgage lending to good risks which might otherwise, as you have suggested, go to a bank, or perhaps worse, from a social point of view, to a second mortgage lender at a higher rate of interest?

Mr. MILLER: That is true. Of course the banks have not gone into mortgage lending as yet.

Mr. LLOYD: Yes. Perhaps I might clear up the phrase "to a bank or perhaps worse"; it might be worse. Perhaps I should illuminate the remark for those who might see some humour in it. Suppose someone goes to a bank where he might be forced to take very much shorter terms because of the liquidity requirements of the banking system. He might be forced to make a much greater rate of repayment on the bank loan portion of his loan, and thereby put a greater strain on the income available to him.

Mr. MILLER: Yes, I tried to introduce that point, but I imagine I was not too clear.

Mr. LLOYD: Is it not correct to say that generally speaking, apart from your desire to be competitive with insurance companies who will be increasing to this ratio, you really feel that there are, on a selected basis, many instances where it would be a good thing to provide a 75 per cent mortgage on selected risks?

Mr. MILLER: That is my opinion.

Mr. LLOYD: Central Mortgage and Housing Corporation lending policy is restricted to certain fields, and the question always comes up concerning the percentage of market value. How significant is the 75 per cent figure when you realize that it is a percentage applied to the market value? Do you have any leeway in this direction?

Mr. MILLER: We make our loans, as I would think that pretty well all the other companies in the association do, on the basis of a percentage.

Mr. GELBER: Which is your company, Mr. Miller?

Mr. MILLER: The Huron & Erie Mortgage Corporation. We may lend on a basis which is not necessarily the same as the market value. In other words, our inspector will go out and put a value on a property. This could easily be something less than the value of the property which is changing hands.

Mr. LLOYD: So to a considerable extent management of trust companies exercise a judgment as to the risk factor and the degree of value that they put on a property?

Mr. MILLER: Very definitely.

Mr. LLOYD: And it is of just as much significance as the percentage?

Mr. MILLER: That is right.

Mr. LLOYD: So there are two aspects really to increasing the rate; one is to give the lending institutions an opportunity to be competitive, and the other is to afford them an opportunity to take selected good risks.

Mr. MILLER: That is correct.

Mr. LLOYD: I now have some questions for Mr. Nelson on the matter of leaseholds. Mr. Nelson mentioned that there are few companies which are incorporated under the provisions of the federal statute.

Mr. NELSON: Yes, sir.

Mr. LLOYD: How do they compare in terms of volume of business with the provincially incorporated companies?

Mr. NELSON: I could not give a percentage of total to you, but I am told that the superintendent of insurance indicated the other day that the assets of provincial companies in total were something like twice those of the federal companies.

Mr. LLOYD: I wanted to get the significance of it, because it leads into my question respecting the utilization of the source of funds for lending on leasehold operations. It seems to me that there is an interest these days in urban renewal, and that Central Mortgage and Housing Corporation attempts to favour municipalities. Central Mortgage and Housing Corporation hold the cleared sites for development proposals on a leasehold basis. Have you seen evidence of this at all in your operations?

Mr. NELSON: I am afraid that is outside my scope.

Mr. ROSE: I would hesitate to express an opinion on it.

Mr. LLOYD: You are not aware of this development, then?

Mr. M. J. W. ROSE (*Canada Permanent Mortgage Corporation*): No. We are very modest lenders under Central Mortgage and Housing Corporation.

Mr. LLOYD: There are evidences, I suggest to you, of municipalities taking advantage of the federal provisions, and there are opportunities for trust companies to be part of urban renewal developments; they are tending to practice leasing and lending for a long time rather than to dispose of land at what might be an encouraging market price. In this way the municipalities can maintain a control and interest in the development value of the land. There is quite a write-off. For example, if you clear a site at a cost of, let us say, \$2 million or \$3 million and you put this land up for development proposals, the property value to the municipality is very low. It may drop from \$2 million down to, let us say, \$500,000; whereas, if this leased property were spread over a longer term, then there would be a greater recovery to the municipality and to the federal government, so much so that by leasing the property it would be possible for the two partners, the federal government and the local municipality, to foresee the recovery of their initial investment. There is a very small offsetting grant for ground rent to accomplish it in the long term. I would think this would have been of some significance to the trust companies. Would you say that this was not one of your reasons for seeking the power to lend on leasehold property?

Mr. MILLER: Perhaps I ought to say that Mr. Rose and I represent loan companies here today. Mr. Nelson represents the Trust Companies Association. But I think your approach to this is completely reasonable. It has just not been our experience yet that we have got into this form.

Mr. NELSON: Might I say that trust companies have been moving into N.H.A. mortgages much more heavily than others. This may represent some trend in the industry, but I do not think it has swept through the entire industry yet.

Mr. LLOYD: I was thinking of the N.H.A. loans and this development in the field of urban renewal.

I have one final observation with respect to the auditors' certificate. You are speaking here on behalf of auditors who made representations to you. Is that right?

Mr. NELSON: No, on behalf of our own companies, companies which tell me that their auditors have taken this position.

Mr. LLOYD: And you feel possibly that the proposed wording of the certificate would demand of the auditors certain routine inspections and checks which they do not make?

Mr. NELSON: It would have to be our understanding that the auditors would want to reassess the wording.

Mr. LLOYD: It was not just a deferment until next year so as to give you an opportunity to make representations?

Mr. NELSON: No, we had no intention of making further representations on the subject.

Mr. LLOYD: I presume what you mean is that the auditors want to examine the wording to see if it will require of them additional audit programs in order for them to be able to comply with the new wording in that sense.

Mr. NELSON: If it were very much earlier in this year I doubt if we would be making this request.

Mr. GELBER: Mr. Chairman, I call it 11.16.

The CHAIRMAN: We got a late start and I would hope we could carry on for a little while longer.

Mr. GELBER: I am sorry, I cannot agree with that. I would prefer not to ask my questions if your wish is to let the witnesses retire now, but if the

witnesses are going to be here this afternoon I will ask my questions then. There is nothing urgent in what I have to ask, but I would like to go to my caucus meeting.

The CHAIRMAN: If so, we will be without a quorum.

Mr. LLOYD: Unfortunately, I am in the same position.

Mr. GELBER: You do not have to come back for me.

The CHAIRMAN: I will ask the indulgence of our witnesses and ask the committee to reconvene at 3 o'clock or immediately after orders of the day in this same room.

AFTERNOON SITTING

THURSDAY, November 12, 1964.

The CHAIRMAN: Gentlemen, we have a quorum. Would you proceed, Mr. Gelber.

Mr. GELBER: Mr. Chairman, I would like to ask the witness whether it is not true that trust companies get a higher rate of interest on mortgages than life insurance companies?

Mr. NELSON: Not to my knowledge, Mr. Chairman.

Mr. GELBER: Could either of the other two witnesses answer that question.

Mr. ROSE: I think trust and loan companies have to receive as high a rate as possible because they borrow their funds and the life companies do not. There has to be a spread between borrowing and lending rates. Therefore, trust and loan companies accept more mortgages at higher rates than do insurance companies.

Mr. GELBER: They do charge a higher rate.

Mr. ROSE: Well, I do not know whether or not that is the proper word to use.

Mr. NELSON: I was not aware of that.

Mr. GELBER: Are either one of the two witnesses here involved in companies that guarantee mortgages. As you know, we incorporated a company several months ago and the Hon. Donald Fleming appeared on that occasion. Do either of these gentlemen represent one of those companies which is involved in the complex of insuring mortgages?

Mr. MILLER: We are not in the insurance company but we are in Central Covenants.

Mr. GELBER: You are in the lending company.

Mr. MILLER: Yes.

Mr. GELBER: You have money in it?

Mr. MILLER: Yes.

Mr. GELBER: What average rate of interest would the lending company get?

Mr. MILLER: At the present time the combined rate is $7\frac{1}{4}$ per cent. We get 7 per cent and the Central Covenants receive a rate, which I believe, works out something like 8 per cent, but I am not too sure.

Mr. GELBER: But, you have no financial interest in the company that gets 2 per cent for guaranteeing the whole mortgage?

Mr. MILLER: We have no financial interest in the insurance company.

Mr. GELBER: Who does that?

Mr. MILLER: I believe it is a syndicate, including the Aluminum Company of Canada, Greenshields and the Bank of Nova Scotia.

Mr. GELBER: You have no direct interest in that?

Mr. MILLER: We have no financial interest in the insurance companies.

Mr. GELBER: What is the usual custom in respect of trust companies putting money out on mortgages? Is there a rule of thumb that a percentage of their assets has to be in mortgages or would it vary considerably from company to company?

Mr. NELSON: I think it would vary considerably from company to company. If I remember correctly—and I would have to refer to the reports for absolute accuracy—I think slightly over 50 per cent of the present assets of trust companies taken as a block are in mortgages. It is probably nearer 60 per cent but, as I say, I would have to refer to figures in order to be accurate in this connection.

Mr. GELBER: But there is no restriction; it is just a matter of good business judgment?

Mr. NELSON: I suppose the main restriction would be that 50 per cent of guarantee funds must be in trustee securities.

Mr. GELBER: Deposits and such things.

Mr. NELSON: Yes. Of course, it would depend on legislation in the provinces or the jurisdiction under which the trust company was operating. A federal trust company is subject not only to the federal act but the legislation in the province where it is operating.

Mr. GELBER: Now, there has been quite a development in the last number of years in respect of new trust companies, small trust companies.

Mr. NELSON: Yes.

Mr. GELBER: Do you have any reservation about that development which you would like to express or are you in a position to pass an opinion at this time.

Mr. NELSON: I do not know that I would express any formal reservation. There has been a very substantial increase in the number of trust companies and, with one exception, I think these all have been companies granted provincial charters. This has taken place, I think, mainly in Ontario, Manitoba and Alberta. There has been only one new federal charter granted and that company has not become operative.

Mr. GELBER: Are the provincial companies part of your association?

Mr. NELSON: Oh yes, the provincial companies are. There is a tendency for the new companies to apply for membership as they get into operation.

Mr. GELBER: Do you feel they are guided by the same rule of thumb in terms of the percentage of their assets that are invested in mortgages as the larger and older companies are?

Mr. NELSON: I do not think that comment of mine, which was really a recollection as to the percentage, would necessarily apply to every company. I am sure some would be very much higher than that.

Mr. GELBER: Do you recommend any restriction on the amount other than what you have mentioned?

Mr. NELSON: No.

Mr. GELBER: Would you recommend any further restriction on the amount of investment in mortgages?

Mr. NELSON: No, I would not.

Mr. GELBER: A number of members have expressed concern about the fact that a large percentage of the assets of trust companies is on demand and we

are wondering whether existing regulations adequately safeguard the liquidity of trust companies in view of the excitement that prevails in the real estate market?

Mr. NELSON: Yes. There are different jurisdictions here, of course, and somewhat different circumstances in the different jurisdictions. But, I think with prudent management of companies, coupled with the restrictions and the real supervision and inspection to which they are subjected there is an adequate safeguard.

Mr. GELBER: So, you would have no recommendation to make beyond what exists?

Mr. NELSON: No.

The CHAIRMAN: Would you proceed, Mr. Moreau.

Mr. MOREAU: Mr. Chairman, most of the ground I intended to cover has been covered. But, I did wonder about the objection taken in respect of clause 30. It is not specifically an objection but there was a question in respect of a delay. Is not the form which is prescribed under clause 30 already one which is commonly used in the industry? Is it not a pretty commonly used form?

Mr. NELSON: We did express some concern about this prior to our submission to this committee but we have withdrawn our objection. We have no objection to make to the requirement.

Mr. MOREAU: You would not have any idea, I suppose, of how many company audits presently use this form?

Mr. NELSON: I know that we were looking at annual reports on several occasions recently and there is quite a variety of usage which partly stems from different jurisdictions and partly for other reasons. There is certainly a variety of usage; in fact, quite a wide variety.

Mr. MOREAU: You would not have any idea how many would use a substantially different form and how many, by and large, would use this form?

Mr. NELSON: I am afraid I would not be able to say offhand. We have all these reports in our office but I must confess that I have not tried to get any statistics in that respect.

The CHAIRMAN: Have you a question, Mr. Lambert.

Mr. LAMBERT: I am concerned with a couple of matters, and I will take them in the sequence of amendments as proposed by the Trust Companies Association. My first question relates to the addenda at the bottom of page 1A. Under section 32(1) of the bill the trust companies association request—

The CHAIRMAN: If I may interrupt, Mr. Lambert, would you give us the page.

Mr. LAMBERT: It is on page 1A of the proposed amendments. It deals with an amendment to section 32 (1) of the bill, wherein it is proposed that trust companies be entitled to invest to a greater extent in common shares, and then there is the introduction of the earnings and dividend test. Then, it is requested that this be applied in part to preferred shares. I draw to your attention the wording of subparagraph (i) of the proposed amendment to paragraph (h), wherein the word "or" is used. In other words, we are asked to approve that a trust company may invest to the limited percentage of preferred shares in respect of a corporation incorporated in Canada if the corporation has had a dividend payment record of five years in conformity with the requirement of preferred shares, "or" that this meet the dividend and earnings test in respect of common shares.

Mr. NELSON: Yes.

Mr. LAMBERT: But, not the alternative of "or". Why not make it conjunctive by using the word "and". After all, the Trust Companies Association is

getting an extension here into common shares, where there is a considerable extension on the basis of the earnings record. Would you not agree that notwithstanding the prior claim of preferred shares there could be non-compliance with the common shares and that under the proposed amendment suggested preferred shares would be authorized.

Mr. NELSON: Do you want me to comment, sir, on "and/or"?

Mr. LAMBERT: Yes, I want to draw a clear distinction. You are asking us for something that is a greater extension than what the proposed amendment under the act allows.

Mr. NELSON: I do not think we are asking for a great extension. Section 63 (1) (h) of the act now permits trust companies to invest in preferred stocks if these preferred shares have paid regular dividends.

Mr. LAMBERT: Yes.

Mr. NELSON: Now, we are actually losing something when we ask this because what we are asking means that the preferred shares must now have the same requirement as the common stock.

Mr. LAMBERT: I beg to differ. You used the word "or". Under your proposed amendment a company could meet the requirements of the preferred shares but it need not meet the requirements of the common shares, and as long as it met the requirements of the preferred shares you could invest in those.

Mr. NELSON: I see your point now.

Mr. LAMBERT: I am wondering why the word "or" was used rather than "and".

Mr. NELSON: I do not think Mr. Chairman, that was intentional. It was not our intention to ask that we get two things. We meant to ask for this situation, that if we could buy the common stock of a company we could buy its indebtedness or its debentures and bonds, or its preferred stock. We recognize this would lose us a certain privilege in buying preferred stocks if that rule were adopted.

Mr. LAMBERT: I would suggest to you that as far as I am concerned if you had the word "and" inserted there your proposed amendments might make sense and would be acceptable. However, certainly under this proposed form I cannot see how it can be acceptable because you are asking us to give you qualifications in two categories. While a company might meet its requirements under a preferred share category it might not meet the requirements in the common share category.

Mr. NELSON: Just a moment, sir. Number 1 specifies that the common share should have met the specified dividend requirements. That refers, I believe, to the requirements for the common shares.

Mr. LAMBERT: No, No. 1 says that it shall have met the requirement in so far as the rate upon all its preferred shares is concerned.

Mr. NELSON: I must fall back on this, Mr. Chairman, and say that what we are asking is that if the common shares are available for our investment we would like the right to invest in that company's preferred stock or in its indebtedness. If there is an error as a result of draftsmanship, I apologize for it; I received it just before I came here.

The CHAIRMAN: I think perhaps Mr. Humphrys could clarify this.

Mr. HUMPHRYS: Yes, I could perhaps clarify that point, Mr. Chairman.

The provision applying to the insurance companies does permit them to invest in debentures if the company that issued the debentures has paid sufficient dividends on its preferred shares to qualify the preferred shares as investments or if it has paid sufficient dividends on its common shares to

qualify its common shares. Therefore, it is an alternative test for insurance companies that applies under existing legislation, and with the amendments that alternative will continue to apply. As I understand it, the request in this brief is for a similar provision.

Mr. LAMBERT: Do you mean to tell me that if a company qualifies in so far as its preferred shares are concerned it ipso facto qualifies with respect to its common shares, and vice versa?

Mr. GELBER: And debentures.

Mr. HUMPHRYS: No, but if its common shares qualify then its preferred shares qualify. If its preferred shares qualify then its debentures qualify.

Mr. LAMBERT: I think we need to give this point further study because it is certainly not clear to me that if a company has met its requirements for preferred shares it will ipso facto qualify for the purchase of its common shares if you use the word "or". There are two separate tests applied and they are not conjunctive; they are disjunctive.

Mr. HUMPHRYS: The common shares will not qualify on the basis of dividends on preferred shares but its debentures will qualify if the preferred shares qualify.

Mr. LAMBERT: With the greatest respect, nothing is mentioned here about debentures. All we are talking about here is preferred shares in a corporation incorporated in Canada. This is paragraph (h).

Mr. HUMPHRYS: Preferred shares will qualify if the common shares qualify.

Mr. LAMBERT: And if common shares do not?

Mr. HUMPHRYS: Then the preferred shares will qualify if they meet the prescribed dividend test, which is payment of all dividends on all preferred stock at the specified rate every year for the last five years.

Mr. GELBER: What is the test on debentures? How many times must they earn interest before a debenture qualifies?

Mr. HUMPHRYS: For insurance companies they must earn twice their interest requirements in the last five years. In at least four of the last five years they must have earned $1\frac{1}{2}$ times their annual interest requirements. That is, in the five year period taken together it must be ten times the annual interest requirement, and in any four or five years it must be at least $1\frac{1}{2}$ times.

Mr. LAMBERT: That settles my questions on that point. However, unless any other member has anything to ask I have some questions on another point.

The CHAIRMAN: Proceed, Mr. Lambert.

Mr. LAMBERT: With reference to clause 6 as proposed on page 2 of the brief, the trust companies would like to be able to invest their funds in fully paid common shares of any corporation incorporated to acquire, hold, maintain, improve, lease, manage or act as agent for the purchase, sale or lease of real estate or leaseholds.

These real estate firms do act in regard to insurance. The real estate firms usually have an insurance department as an adjunct.

I have raised the point before—and I have not yet had an answer from the superintendent of insurance—whether it is a provision presently in the federal legislation that it shall not be a condition of the granting of a mortgage that insurance shall be placed with any specified company, or that existing insurance shall be cancelled and placed with a specified company, either through a wholly owned subsidiary of the mortgage company or nominee company, or as it will be with life insurance companies where they may control a general insurance company.

Mr. NELSON: In other words, you want to leave the person free to make his own choice?

Mr. LAMBERT: Yes, because it is contrary to some provincial insurance acts. I also think it is a nefarious practice.

Mr. NELSON: I think it is similar in the Ontario act.

Mr. LAMBERT: Would the trust companies be averse to such a provision in federal legislation should there be jurisdiction in this regard?

Mr. NELSON: We have no idea of insurance in this connection at all, Mr. Chairman. I think the answer to that is no, we would not be averse.

Mr. LAMBERT: There is one question I would like to put to Mr. Nelson or one of the other witnesses.

Mr. Humphrys the other day pointed out very definitely that there are limitations or requirements for consolidation for borrowing. Loan or trust companies do borrow funds for purposes of investment and there are provisions in connection with the trust companies that, though under section 33 they may not exceed $12\frac{1}{2}$ times of the excess of the assets over the liabilities, subject to permission they can go up to 15 per cent.

In relation to the proposed amendment to increase loanable values up to 75 per cent, what is the observation of the witness on the fact that by being entitled to borrow greater and greater amounts with an increase in the ceiling on mortgages, trust companies and loan companies which are quite heavily involved in real estate development get into a position that becomes somewhat more precarious? Perhaps precarious is the wrong word, but their position becomes a little more extended in the event of even a minor recession where realty values drop.

I believe Mr. Humphrys said that if you had an excess of assets over liabilities of \$1 million you could borrow—subject to the limitations—a further \$15 million, giving you \$16 million available for investment, and it would require only a $6\frac{1}{4}$ per cent drop in the realty market to wipe out the capital of a trust or loan company that is committed to these realty transactions.

Do you feel that there is any danger in this particular sector?

Mr. NELSON: No, not under sound management, sir.

Mr. LAMBERT: In other words, you say sound management meaning that you do not go up to 75 per cent?

Mr. NELSON: No, I do not think I could say that. The liquidity requirements of individual companies vary enormously depending on the kind of business they do.

Some companies whose businesses require it do have an extraordinary degree of liquidity because of the business they do; others have a smaller percentage. This in turn relates to the kind of business they do. Many factors come into it, including the way in which money comes into their hands; it may be by demand deposit or it may be by term deposit. For the guaranteed investments certificate or receipt, it is five years and there is a tendency for trust companies to try to match the five year renewable clauses in their mortgages with their five year money on that.

On the average, I think of the 12 companies we use for a monthly report, which represent a pretty high percentage of total assets under administration, in a very rough way it is about 50-50, I believe, for deposit, or demand money, as opposed to term money. Of that demand money an increasing proportion is in the type of account which is not checkable. In other words, people use a true savings account, and I think one might assume that that is a more stable balance than one which a person uses for checking purposes. So it is not just all a demand situation by any means as far as the obligations of the company are concerned.

Mr. LAMBERT: But you will agree that getting into the real estate market and getting out of it is not just like taking off your shirt unless you are prepared to leave it behind.

Mr. NELSON: I would remind you, sir, that I mentioned some time ago on this sample of companies, which represents a high percentage of the industry's assets, that it is not a great deal over 50 per cent that is invested in mortgages. So when you bear in mind the different kinds of liabilities they have and compare them with their assets structure, combined with some prudent management, I do not see anything dangerous.

On the other hand, I do not see that it matters what restrictions you have in the law if you have imprudent or unwise management because then you can certainly get into all sorts of hot water.

Mr. LAMBERT: I am sure the committee do not want to play God in this matter and run the trust or loan company business, but we are all very conscious of the fact that the doors are open so wide that if one of the trust companies gets into trouble they are all in trouble.

Mr. NELSON: I may say, Mr. Chairman, that we are very conscious of things of this sort. This is the kind of matter which engages the attention of our association very closely indeed, and we are aware that there has been for some time a liberalizing trend because of legislation. I can assure you, Mr. Chairman, and your committee, that I think our member companies are in a most prudent mood in regard to these things. They are very very aware of the importance of careful and prudent management.

Mr. MILLER: I believe you used the premise that if the real estate mortgage dropped $6\frac{1}{2}$ per cent the equity in the companies would be eliminated.

Mr. LAMBERT: Under the example I gave, yes.

Mr. MILLER: This, in fact, is not the case. I do not think Mr. Humphrys was giving this illustration in quite that reference. In the first place all mortgages go up to only 75 per cent, so you have to have a 25 per cent drop in real estate values before your 75 per cent loan becomes vulnerable. Then, beyond that you have to have a further drop before the equity of the company becomes impaired.

Mr. LAMBERT: I think you have dealt with mortgages enough, and so have I as a lawyer, to know that if a realty loan gets into trouble, the market value of the property is not the realized value. Therefore, perhaps the thing comes down to 75 per cent and that really is what it is worth on a realization basis because you are under a fire sale and, depending upon the legislation which exists across the country which is uneven, you cannot say that 100 per cent of the value of the property represents an asset in the hands of the mortgagee; it is more like 75 per cent.

Mr. MILLER: The other point, of course, is that your mortgage portfolio itself is maturing all the time so that even if a company is taking on 75 per cent loans, it also probably has far more loans on its books which are paid down to 50 or 45 per cent. Therefore, the proportion of these vulnerable loans is not high in relation to its mortgage portfolio, if you choose to consider them as vulnerable loans.

Mr. LAMBERT: But you agree that a drop in the mortgage value does seriously affect your ratio?

Mr. MILLER: Oh, quite.

Mr. LAMBERT: And while we may be quibbling about one or two per cent, I think it is more in that nature than in the wide figure you gave us.

Mr. NELSON: I would suggest there really is no difference of opinion. The companies are very aware of this.

Mr. THOMAS: I think for the most part the question which I had this morning has been answered. I intended to raise the matter of how close to the 66 $\frac{2}{3}$ per cent limit the trust companies have gone during their past experience. I have taken into consideration there is no rigid measurement in respect of what value really applies; that is, whether it is the assessed value for loan purposes or assessed value for municipal purposes, or somebody's idea of the market value, it has very little meaning. I think, as the witness has pointed out, it is a matter for prudence all the way along the line.

Mr. GELBER: I have one more question. I am very much interested in how the trust companies obtain their income. You receive money from interest and from dividends and from commissions, and some of your companies carry on a very active real estate brokerage business. I am wondering whether you have any figures in respect of the 12 companies you mentioned which represent the bulk of your business, and whether you make a statistical report showing what percentage of their gross business is derived from non-investment income.

Mr. NELSON: We do not have any figures which I remember at all, but I think I can safely say in a general way—and I believe the president of one of our larger companies made this point in his annual address recently—that the income from the fiduciary side, particularly the personal estates management side in the trust company work is a very small return. The major income would come from the financial intermediary side and the service side; that is, where we borrow money, where we take deposits on guaranteed investment certificates and in turn invest that money, and from the services which trust companies supply in the corporate and personal field—mainly in the corporate field.

Mr. GELBER: That would be invested income. I am wondering what percentage of the gross income is from non-investment income?

Mr. NELSON: I am afraid I do not know.

Mr. GELBER: The banks have that information and it is very revealing. It would be very interesting to know to what extent your income is derived from services?

Mr. NELSON: I think the service income is a factor. I have not seen figures on that, frankly. I just know in a general way that the income from the fiduciary aspect, the estate work, is not a substantial percentage; it is very small.

The CHAIRMAN: Do you have any figures in this regard in your report, Mr. Humphrys?

Mr. HUMPHRYS: We do publish a summary of this type of information dealing with trust companies which are licensed by the department.

Mr. GELBER: That is available in your report?

Mr. HUMPHRYS: Yes. I think Mr. Nelson probably is referring to the net income. In the gross income it is a very substantial proportion.

Mr. GELBER: Would you have the gross figures there?

Mr. HUMPHRYS: I have our report for 1962 here. The 1963 report is not yet published. Of the trust companies licensed by the department, the gross income for 1962 was \$25 million, of which \$14 million was the income represented by fees and commissions earned on estates, trusts and agencies; that is the gross income. Of course, what the expenses would be in connection with that particular operation I have no idea.

Mr. GELBER: Would that include real estate commissions?

Mr. HUMPHRYS: That would be fees and commissions from administering estates, trusts and agencies. So, if they were making real estate transactions on an agency basis, the revenue from those transactions would be in this figure.

Mr. NELSON: I think I was separating that, because I did not include in that figure the charges for services.

Mr. LLOYD: I have a question first for Mr. Humphrys, and then perhaps back to the witness from the Trust Companies Association. I think Mr. Humphrys may have the answer. Clause 6 on page 14 with regard to insurance companies makes provision for investment by insurance companies in a real estate company. In the explanatory notes on the opposite page it says:

It would also permit life insurance companies to own subsidiary real estate companies.

Do any of the other provisions in respect of investment in common stock in any way affect this power to invest in real estate companies, or is this something separate and apart?

Mr. HUMPHRYS: This power would be apart from the limitations in subsection (1) of section 63 which means that it would set aside the dividend tests and it would set aside the 30 per cent limit on the investment in any other company, but it would not set aside the ceiling on the total investment in common shares.

Mr. LLOYD: But the other qualifying rules with regard to dividend payments and earnings that you provide in other sections do not apply to this particular section on investment in real estate companies?

Mr. HUMPHRYS: That is correct; but I should add that this investment would be subject to terms and conditions prescribed by the treasury board on the recommendation of the superintendent, so there will be some pattern of supervision over this type of thing.

Mr. LLOYD: I would like to come back to Mr. Nelson. The Trust Companies Association has requested the same power as described by Mr. Humphrys.

Mr. NELSON: That is right.

Mr. LLOYD: I am sure you are not seeking powers just for the sake of having them in the statute; there must be some practical reason for acquiring this power. Would you give the committee an illustration of what you may be denied if you do not have this power?

Mr. NELSON: Briefly, there are two reasons. We are asking for this for those of our member companies which are federally incorporated. The total number in the industry is something like 50, and there are seven federal companies. Many of their provincially incorporated competitors have used this power to operate a real estate subsidiary. The second reason is the companies concerned are not seeking to obtain any additional power; they have the power to do these things under their agency power now. This is a more convenient and better way, in some cases, for them to do it, than under their present real estate department.

Mr. LLOYD: You are aware of what I believe is the British practice in respect of insurance companies. In recent years that has been somewhat expanded because of the major redevelopment plans and projects they have in Great Britain. Under this practice a British insurance company will be the lender, the mortgage lender, to a development company, and has the right to convert debentures which it may take as security for its loans or mortgages; it has the right to convert to common stock in the development company, thus giving it an entry into a company they are financing as a hedging operation against inflation. Is that practice at all conducted in Canada?

Mr. NELSON: I am afraid I just do not know the answer to that.

Mr. LLOYD: You are not aware of it?

Mr. NELSON: No.

Mr. LLOYD: Under this provision that practice could develop.

Mr. NELSON: I should explain that that does mean it does not exist. I have been with the trust companies only for two years. Perhaps I might answer the question indirectly in this way. We are not seeking the power for investment as such. We are seeking a way to perform services. We are not trying to find a way to invest money, or to avoid the restrictions on investments in the act; that is not the purpose at all.

Mr. LLOYD: Do you see an advantage in the possibility of the practice of the British insurance companies being developed in Canada?

Mr. NELSON: There well might be.

Mr. LLOYD: Under this provision you could, in fact, use this power for that purpose?

Mr. NELSON: Subject, of course, to the treasury board and the superintendent of insurance who I am sure will keep a very close eye on it.

Mr. LLOYD: May I suggest to you I think the legislation in respect of the insurance companies foresaw such a possibility.

The CHAIRMAN: If I may interject, gentlemen, conditions being what they were, Mr. Nelson has engaged the services of the railway to transport him back home. This morning we understood he would be leaving at 4.15 p.m. The other two gentlemen can remain behind. If the members of the committee will permit, Mr. Nelson will retire, unless someone has a brief question for him.

Mr. LAMBERT: I have one brief question not dealing primarily with the added powers of the trust and loan companies, but rather with their role as transfer agents. I refer to the changes you have made with regard to the residence qualifications of shareholders in these various types of companies that we are considering. I take it that your association has looked at this matter and is satisfied that they will not impose an improper burden on them, outside of due compensation of course.

Mr. NELSON: Yes. We have discussed this in detail with the department, and we have made no representations on it.

Mr. LAMBERT: It will become a great deal more complicated.

Mr. NELSON: Yes, but I do not think a great many companies are involved, so far as our transfer departments are concerned.

The CHAIRMAN: Thank you very much Mr. Nelson for your presence and co-operation. I can assure you that the committee will consider your amendments, and that they will be voted upon and treated favourably or otherwise.

Mr. NELSON: Thank you. I wish to express our thanks to the committee.

The CHAIRMAN: Mr. Rose and Mr. Miller are still with us. Are there any further questions? If not we may permit all the witnesses to retire. I understand that they may be present throughout our hearings as we go along, and will be available if necessary. But we are not insisting on it.

All the recommendations put forth will be dealt with clause by clause. Thank you, gentlemen. Now, having exhausted our witnesses for the time being, we shall meet again next Tuesday when Mr. Robinette will be here to present his case for the World Mortgage Corporation.

Apart from Mr. Robinette I am not aware of any outside witnesses who desire to make representations. But if there are any you have in mind, the Chair would welcome your bringing them to his attention. The committee is now adjourned until next Tuesday at 10 o'clock.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

STANDING COMMITTEE

ON

CANADA
111

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

(TUESDAY, NOVEMBER 17, 1964)

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DEC 1 1964

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESS:

(Mr. Richard Humphrys, Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Gelber	McLean (<i>Charlotte</i>)
Armstrong	Grafftey	Monteith
Asselin (<i>Notre-Dame-de-Grâce</i>)	Gray	More
Basford	Grégoire	Moreau
Bell	Greene	Munro
Blouin	Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Jewett (<i>Miss</i>)	Otto
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Flemming (<i>Victoria-Carleton</i>)	Lloyd	Vincent
	Macaluso	Wahn
	Mackasey	Whelan
	McCutcheon	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 17, 1964.

(15)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Habel, Klein, Lambert, Lloyd, Macaluso, McCutcheon, More, Moreau, Nowlan, Otto, Pascoe, Pennell, Wahn, Whelan—(19).

In attendance: Mr. Richard Humphrys, Superintendent of Insurance.

The Chairman presented the Third Report of the Sub-Committee on Agenda and Procedure, dated November 16, 1964, which is as follows:

- (a) That Mr. J. J. Robinette, Q.C., be invited to present the brief on behalf of World Mortgage Corporation on Wednesday, November 18, 1964, at 9.30 a.m.;
- (b) That the Minister be invited to appear if necessary to answer any questions of policy;
- (c) That the Superintendent of Insurance be invited to appear on Tuesday, November 17, to answer outstanding questions, and that the Committee then proceed to clause by clause consideration of the Bill.

On motion of Mr. Basford, seconded by Mr. Nowlan, the above mentioned report was approved.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

Mr. Humphrys first gave replies to questions raised earlier to which he had undertaken to obtain answers, and was briefly questioned further.

Clause 1 was carried.

On Clause 2

On motion of Mr. Moreau, seconded by Mr. Whelan,

e. *Resolved*,—That sub-clause 2 of clause 2 be amended by striking out line 9 on page 2 and substituting therefor the following:

“and has, subject to section 45 one vote for each share held by him subject”

Clause 2 was carried, as amended.

On Clause 3

Mr. Moreau, seconded by Mr. Klein, moved that Clause 3 be amended

- (a) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

“long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day,

but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply. Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

- (b) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and
- (c) by striking out line 33 on page 7 and by substituting therefor the following:

“section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

The Committee agreed that the motion for amendment and the Clause be allowed to stand.

On Clause 4

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That Clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

- “4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

Change in capital stock.

“45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of one dollar each or any multiple thereof but not exceeding one hundred dollars each.

Voting rights qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less, than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following sections:"

Clause 4, as amended, was carried.

On Clause 5

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

Clause 5, as amended, was allowed to stand, in order that the Minister may be questioned on this clause.

Clause 6 was allowed to stand.

Clauses 7 to 10 inclusive were carried.

Clause 11, being consequential on Clause 6, was allowed to stand.

Clause 12 was carried.

On Clause 13

On motion of Mr. Moreau, seconded by Br. Macaluso,

Resolved,—That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Clause 13, as amended, was allowed to stand.

Clauses 14 to 17, inclusive, were allowed to stand.

Clause 18 was carried.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That a new clause 19 be inserted immediately after the headings "Part II" and Foreign Insurance Companies Act" following line 34 on page 24, as follows:

1960-61, c. 16, s. 4(2).

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine."

On Clause 19

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That as a consequence of the insertion of a new clause 19, clause 19 be renumbered as clause 20, and that the clause be amended by striking out lines 35 to 37 inclusive on page 24, and by substituting therefor the following:

"20. (1) Paragraph (b) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That sub-clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or" Clause 19 of the Bill, as amended, was allowed to stand.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clauses 20 to 39 be renumbered as clauses 21 to 40 respectively.

Clause 20, as amended by renumbering, was allowed to stand.

Clauses 21 to 25, inclusive, as amended by renumbering, were carried.

As the remaining clauses of the Bill dealt with amendments to the Trust Companies and the Loan Companies Acts, it was agreed not to proceed further with consideration of the Bill at this time, as it was felt that Mr. Robinette might wish to deal with these sections in his brief to be presented tomorrow.

At 11.00 a.m., the Committee adjourned until 9.30 a.m., Wednesday, November 18, 1964.

Dorothy F. Ballantine,
Clerk of the Committee

EVIDENCE

TUESDAY, 17 November, 1964.

The CHAIRMAN: I see a quorum, gentlemen, and I will call the committee to order. I would inform the committee that a meeting of the steering committee was held yesterday in my office. At that time we were advised that Mr. Robinette is still tied up in the Supreme Court of Canada but would be free tomorrow morning. The steering committee recommends that we convene tomorrow at 9.30 to hear Mr. Robinette. It is my understanding that his submissions would not take more than half an hour. Allowing for the usual searching questions that come from the committee to the witnesses, it would appear that we would be able to dispose of Mr. Robinette's presentation before the committee in time for the members to attend the caucus meetings that are usually held on Wednesdays. I would ask the committee if that meets with their approval, that we convene tomorrow at 9.30. It is so moved by Mr. Basford, seconded by Mr. Nowlan. Is everyone in favour?

Motion agreed to.

So far as we are aware, Mr. Robinette is the only remaining witness who has indicated a desire to appear before the committee, and so, pending his appearance tomorrow, it was suggested that the superintendent come forward. I believe he is in a position to answer some questions that have been asked and have as yet remained unanswered. I will ask Mr. Humphrys to deal with questions that are still before the committee.

Mr. RICHARD HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Mr. Chairman, members of the committee, during the earlier meetings a number of questions were raised to which I undertook to get the answers. I have them now, so I would just like to deal with a few points and put the replies on the record.

One of the questions related to the number of new issues of common shares that would qualify for investment under the new tests proposed in this bill. I gave as an estimate the number of 44 additional common stocks that would qualify. This figure was supplied to me by a life insurance company on the basis of their analysis of the effect of the amendments, and they have now given me a classification by industry of those 44 issues. The classification is as follows: trust and loan, one; acceptance companies, one; investment trusts, one; beverage companies, one; chemical and textile companies, two; construction and materials, two; food and retailing, four; forest products, three; industrial mining, one; metal working, six; oil and gas processing, two; pipe line, two; utility, two; base metals, seven; western oils, four; miscellaneous, five. The total is 44. I should explain that that total does not include companies such as Union Carbide that might qualify if their shares are offered on the market, because this analysis was based upon information that is only now publicly available. Some of the Canadian subsidiaries of foreign companies do not make financial information publicly available, so it was not possible to get a complete analysis.

Another question raised had to do with the volume of business out of Canada transacted by Canadian life insurance companies. At the end of 1963 Canadian life insurance companies had \$55 billion of life insurance in force; of this \$16 billion was out of Canada, or about 30 per cent. Of the business out

of Canada, 70 per cent was in terms of U.S. dollars, so the most of that would be in the United States. It is interesting to note that the business transacted out of Canada by Canadian life insurance companies at \$16½ billion is almost the same as the business transacted in Canada by non-resident companies, a total of \$17½ billion.

Another question raised was whether the shares of some companies recently taken over by foreign interests would have been eligible investments for Canadian life insurance companies. The companies named were John Labatt Limited, Canadian Oil Company Limited and Atlas Steel Limited. The common shares of all of those companies were eligible investments.

Another question was raised concerning Union Carbide. At the present time, Union Carbide shares are eligible investments for life insurance companies only pursuant to the basket provision. Under the proposed test in the bill they would qualify—under the earnings test.

A further question related to the requirements in the United States concerning investments in common shares. In my answer I explained that each state has its own requirements, and that there is a great variety. I have the requirements of four states here as a sample. In New York common shares qualify if the issuing company has paid a four per cent dividend each year for the last ten years, and in addition had aggregate earnings in ten years sufficient to pay the dividend.

The maximum investment that a life insurance company may make in common shares is five per cent of its assets, or one half of its policyholders' surplus. A company may not invest in more than two per cent of the issued shares of any one company, nor may it put more than one fifth of one per cent of its assets in any one company. In Illinois the shares are eligible investments if they are listed on a public exchange and if the issuing company has earnings in the three of the last five years at least equal to 12 per cent of the price paid per share.

The maximum investment that a company may make in common shares is 50 per cent of the excess of its capital and surplus over the minimum capital and surplus required by the law. In Pennsylvania a company may invest in the common shares of any solvent company up to a maximum of its surplus and 25 per cent of its reserves. However, there is an additional limitation of 5 per cent of its assets. In Ohio a company may invest in common shares up to the amount of its capital and surplus only, but not more than five per cent of its assets. The shares must have paid cash dividends in three of the last five years and have earned at least four per cent of the par value of the shares over the last five years. It can be seen, therefore, that there is a very great variety, but, generally speaking, the maximum limit on the investment in common shares in the United States is very much lower than it is in Canada.

I would also like to correct a somewhat confusing answer I gave to a question relating to the power of trust companies to purchase the shares of other trust companies. The fact is that under the normal investment provisions a trust company cannot invest in the shares of another trust company. It may, however, buy shares of other trust companies as a step leading to amalgamation of the two companies.

Those are all the comments I have.

Mr. LAMBERT: I have a question on the last point relating to the last answer given by Mr. Humphrys. Mr. Humphrys, how can you distinguish between what might be called wide investment and investment with a view to acquisition? There are two ways of doing it; there is a real take over bid, and there is the quiet picking up of shares on the market. How do you distinguish between the two methods of proceeding?

Mr. HUMPHRYS: There is a general prohibition in the investment provisions against any trust company investing in the shares of another trust company, but a subsequent section permits a company to buy shares off another trust company, notwithstanding that prohibition, subject to certain safeguards: first, they must have the permission of the treasury board; second, the initial purchase must be at least 67 per cent of the shares of the other trust company; third, the purchase must be approved at a special meeting of both companies; and, fourth, the two companies must be amalgamated within a limited time after the purchase.

Mr. LAMBERT: In other words, it is not possible for one trust company to quietly buy up the shares of one of its competitors?

Mr. HUMPHRYS: No.

Mr. KLEIN: What happens when a company buys up securities substantially beyond that provision? What happens if a company would buy considerably more than seven per cent?

Mr. HUMPHRYS: We would require the company to dispose of the excess.

Mr. KLEIN: Suppose at the moment you require them to dispose of it the securities in question had gone down substantially, and if they were sold at that time it might impair the capital of the company?

Mr. HUMPHRYS: If they made the investment beyond their corporate powers, they would have a questionable title to the investment in the first place and they would have acted beyond their powers. We would have to take the view that the investment was an improper one and should be disposed of. If it were a question that threatened the solvency of the company, I would not like to give a categorical answer to that. I think one would have to examine the circumstances to see what action would be taken. I think as a minimum we would have to strike the asset out of the balance sheet of the company in assessing its financial position in meeting the requirements of the act that would authorize it to continue in business.

If the financial condition of the company was such that its solvency was threatened, I think we would have to call for additional capital funds to be paid in, if that could be done. Otherwise, we would have to insert such conditions in the licence as would be needed to protect the public, and perhaps, further, to take steps to try to transfer the business of the company to some other solvent company. There would be quite a variety of actions available, and the one taken would depend very much on the circumstances of the case.

Mr. KLEIN: Would you have discretion in giving them a time limit within which to dispose of these assets?

Mr. HUMPHRYS: The minister has discretion to put any condition that he wishes in the licence of the company which comes up for renewal annually. If this particular event took place between licence renewals, we would require them to dispose of the security. I am not sure that we would lay down a specific time limit, but we would expect them to take action promptly.

Mr. KLEIN: What action would you take if they refused to comply with your order?

Mr. HUMPHRYS: I think we could withdraw their licence, or we could put conditions in it, at least when it was up for renewal.

Mr. KLEIN: Could you ask for the cancellation of the corporate powers of the company or its charter?

Mr. HUMPHRYS: We could not do that. The most we could do would be to recommend to the minister that he withhold the renewal of a licence or else insert conditions in the licence. If the company is such that its financial condition is deemed not to warrant its continuation in business, then it could be deemed insolvent and consequently be thrown under the winding up act.

The CHAIRMAN: Are there any other questions?

Mr. LAMBERT: I was wondering whether Mr. Humphrys was able to determine whether there are any conditions within the regulations or otherwise prohibiting a mortgage company or an insurance company from making conditions on the placing of insurance?

Mr. HUMPHRYS: We have not received a reply from the Department of Justice to our inquiry on that point. I can make a further inquiry to see whether they are in a position to answer now or whether they feel that they have to take a longer time to investigate it.

Mr. LAMBERT: Could you inquire for me, Mr. Humphrys, because I think it may be something on which it may be necessary to put forward an amendment or a proposal.

The CHAIRMAN: Are there any further questions on the answers given by Mr. Humphrys this morning? It was suggested by the steering committee that we commence a clause by clause discussion of the bill, standing those clauses on which further information is required, with a view to expediting the dealing with this bill and bearing in mind that we anticipate that there will be committees going hard to work on the bill now before the house to deal with pensions and so forth. We are spreading ourselves pretty thin as it is as far as this committee's work is concerned. If I have the permission of the committee, I will now call clause 1.

Clause 1 agreed to.

Mr. BASFORD: It was my understanding at the earlier meetings that the minister was going to appear before the committee.

The CHAIRMAN: The steering committee said that if any questions were raised the minister would be called. The minister has no intention of avoiding this committee. Mr. Nowlan will confirm that we decided at the steering committee we would proceed clause by clause. If the minister is asked to come on any particular clause, he will come.

Mr. NOWLAN: It was my suggestion that the minister should not have to be here all the time but that if there was any question asked on any clause that the minister should be asked to come.

The CHAIRMAN: I should add that Mr. Robinette will not be dealing with part 1 of the bill concerning insurance companies which we are now considering in the committee. He will only deal with clause 40 of this bill.

On clause 2—*Qualifications of directors.*

Mr. MOREAU: There was an amendment to clause 2. I must first confess that my folder is over in the centre block in my desk and I have not got my explanatory notes. I do not even remember what this amendment was about.

The CHAIRMAN: The superintendent has a copy, Mr. Moreau, and I believe he is in the position to explain the amendment.

Mr. MOREAU: I have sent a messenger over for my folder. The amendment was to strike out line 9 on page 2 and substitute the following: "and have, subject to section 45, one vote for each share held by him subject".

Mr. HUMPHRYS: This is a consequential amendment by reason of introducing a new clause to the bill subsequently. The new clause gives life insurance companies power to subdivide their shares but modifies the voting rights to some extent. This calls attention to the modification of the rule of one vote per share.

The CHAIRMAN: Shall clause 2 as amended carry?

Mr. LAMBERT: Are you satisfied that as a result of this wording which introduces the word "subject" twice into the subclause no conflict is created between clause 45 and any of the following provisions?

Mr. HUMPHRYS: I am satisfied it does not.

The CHAIRMAN: It is moved by Mr. Moreau and seconded by Mr. Whelan that clause 2 be amended as outlined. All in favour?

Amendment agreed to.

Shall clause 2 as amended carry?

Clause 2, as amended, agreed to.

On clause 3—*Definitions*.

Mr. MOREAU: There is another amendment there. This one has to do with fixing the relationship of the stock presently held rather than the actual number of shares. It deals with further provisions we made for reducing the par value of the stock and therefore the provision for stock splits. The amendment is that clause 3 be amended by striking out lines three to nine on page 7 and substituting wording which I think most members of the committee have before them. I could read it if you like but it is almost two pages long. Can it be taken as read?

The CHAIRMAN: Mr. Moreau moves, seconded by Mr. Macaluso that clause 3 be amended as outlined in the bill. I would suggest that that amendment stand in view of the fact that it has been requested that the whole clause stand.

There is also a motion to further amend clause 3.

Mr. HUMPHRYS: Since this bill was published, we have had a number of inquiries on this particular section. It has to do with the exemption in favour of those companies where more than 50 per cent of the shares are now held by one non-resident. Under the bill such companies would be exempt from these provisions limiting non-resident ownership of shares and the transfer of shares. The amendment which has been proposed by Mr. Moreau would in its first part amend the section which preserves the voting rights for these non-residents who now own more than 10 per cent of the shares of the company. One of the companies which would be exempt from these provisions has expressed a great concern that this particular provision would apply to them; and it was certainly the intention that this should apply. So they have asked that this matter be clarified and have suggested the addition of some words at the end of the first paragraph in the amendment to the effect that this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply. This does not change the intention of the bill or the amendment, but merely clarifies this particular point for the benefit of the company which expressed concern about it.

The CHAIRMAN: It was my understanding that Mr. Moreau was including these additional words in his amendment.

Mr. MOREAU: I accept this, Mr. Chairman.

The CHAIRMAN: Are there any further questions on clause 3 before we move along to another clause?

Mr. LAMBERT: What about the amendment which appears on page 2? Are you going to move it too?

The CHAIRMAN: I think we should have all the amendments put now that we are formally dealing with it.

Mr. MOREAU: The second part of the amendment had to do with the re-numbering as follows:

(b) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

And in the third part of the amendment, part (c):

(c) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

Conclusions reached by directors.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

The CHAIRMAN: Do you so move?

Mr. MOREAU: I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso. I presume this will be stood along with the other amendments to this section. Are there any further proposed amendments to clause 3? We shall stand this clause.

Clause 3 stands.

Now, clause 4.

On clause 4.

Mr. MOREAU: There is an amendment to it as well.

The CHAIRMAN: All right. The superintendent is familiar with this amendment.

Mr. HUMPHRYS: This permits life insurance companies to subdivide the par value of their common shares below the present minimum of \$10; they can go down to \$1 subject to the provisions which will preserve the balance of the voting rights between the participating policyholders and the shareholders. This was not in the original bill because it was not desired to upset the balance of voting rights. But the industry argued very strongly for it. They thought that with the limitation on the rights to sell shares to non-residents the market would be narrowed. If they could subdivide the par value of the shares they would have a better remaining market. They agreed to the limitation on the voting rights in order to preserve a reasonable balance between the policyholders and the shareholders.

Mr. MOREAU: The amendment reads:

That clause 4 be amended by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said act is repealed and the following substituted therefor:

Change in capital stock.

"45. (1) Notwithstanding anything contained in its act of incorporation or in this act, if the subscribed stock of a company is fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple *thereof but not exceeding* one hundred dollars each.

Voting rights qualified.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars

each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

The CHAIRMAN: You are tabling the amendment?

Mr. MOREAU: Yes.

The CHAIRMAN: I think everyone has a copy of the proposed amendment. This amendment is moved by Mr. Moreau and seconded by Mr. Macaluso.

Mr. LAMBERT: I think there is some difficulty here. You are striking out the remaining portion of what now stands?

Mr. MOREAU: No. I am striking out lines 34 to 36.

Mr. LAMBERT: That is an awkward portion. There is nothing which will incorporate what you propose in 45B.

Mr. HUMPHRYS: Yes; at the foot of the page, in subclause 2 of the new clause 4 there are these words "The said act is further amended by adding thereto immediately after section 45A thereof, the following section". This would go back to the bill as printed, and it would be 45B.

The CHAIRMAN: These amendments have already been printed in the proceedings. If anyone forgot to bring his copy with him this morning, I think we have enough copies of the proceedings here. Are you satisfied, Mr. Lambert?

Mr. LAMBERT: Yes.

The CHAIRMAN: Shall this amendment carry?

Amendment agreed to.

Shall clause 4, as amended, carry?

Clause 4, as amended, agreed to.

Now, clause 5?

Shall clause 5 carry?

On Clause 5—*Municipal, etc., securities.*

Mr. MOREAU: I have an amendment here as follows:

That sub-clause 1 of clause 5 be amended by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso. Shall the amendment carry?

Amendment agreed to.

Mr. BASFORD: I would like to have a word from the minister on subsection (1).

Mr. MOREAU: Dealing with what?

Mr. BASFORD: Dealing with the earnings record of the company.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is it not at the foot of page nine?

Mr. MOREAU: Could we not carry the amendment then?

Mr. BASFORD: Yes, I have no objection.

Mr. MOREAU: We could carry the amendment, because this is on a different point.

The CHAIRMAN: On Clause 5?

Mr. MOREAU: Yes.

The CHAIRMAN: All right then. This was moved.

Mr. MOREAU: I have already moved the amendment, seconded by Mr. Macaluso.

The CHAIRMAN: Shall the amendment carry?

Amendment agreed to.

At the request of Mr. Basford we shall stand clause 5. I understand there is another amendment being proposed by Mr. Moreau. Perhaps we might deal with it.

Mr. MOREAU: Yes. I move:

That sub-clause 6 of clause 5 be amended by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

Mr. HUMPHRYS: This amendment relates to investment in income real estate. The bill proposes to enable a company to invest in real estate for the production of income, if the real estate has been leased to a national or a state government. This amendment would include a municipal government.

The CHAIRMAN: Shall this amendment carry?

Mr. MACALUSO: I second it.

The CHAIRMAN: It has been moved by Mr. Moreau and seconded by Mr. Macaluso.

Amendment agreed to.

Clause stands.

This carries us over to Clause 7. Clause 5 stands. What about clause 6? Shall clause 6 carry or stand? Are there any amendments to clause 6 before we pass on?

Clause 6 stands.

Are there any amendments to clause 7?

Clause 7 stands.

Shall clause 8 carry?

Clauses 8 to 11, inclusive, agreed to.

Shall clause 11 carry?

Mr. LAMBERT: This is related, I think, to clause 6.

Mr. HUMPHRYS: Yes, it is consequential on the amendment to clause 6.

Mr. LAMBERT: Then I think it should stand.

The CHAIRMAN: All right, it stands. Is there anything else involving this consequential amendment?

Mr. HUMPHRYS: No.

The CHAIRMAN: All right, clause 11 stands.

Mr. MOREAU: Clause 6 did carry, did it not?

The CHAIRMAN: No. Clause 6 was stood. Clause 11 stands.

Shall clause 12 carry?

Clause 12 agreed to.

Shall clause 13 carry?

On clause 13—*Municipal, etc., securities.*

Mr. MOREAU: There is another consequential amendment as follows:

That sub-clause 1 of clause 13 be amended by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Mr. HUMPHRYS: This is the same as the previous amendment. This applies to investments of British companies, which may invest in trusts in Canada.

The CHAIRMAN: Shall the amendment carry to clause 13, moved by Mr. Moreau and seconded by Mr. Macaluso?

Amendment agreed to.

Shall the clause as amended carry?

Clause, as amended, agreed to.

Are there any further amendments.

Mr. MOREAU: I have one on page 21 as follows:

That sub-clause 8 of clause 13 be amended by striking out line 14 on page 21 and by substituting therefor the following:

"government or municipality in Canada or any agency thereof, or"

Mr. HUMPHRYS: This is the same amendment I just described as it relates to British Companies. It enables them to invest in income real estate leased to a municipal government.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I notice in the amendment to subclause (1) of clause 13, that there is a misprint, and you have two "that" in there alongside each other. It should not go into the record that way.

The CHAIRMAN: I think that that appeared when they printed the proceedings. It was not in the original amendment tabled by Mr. Moreau. I think that error crept into our own printing of the amendment.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, just so long as it is not carried on.

The CHAIRMAN: Your point is well taken. I think it was a printing error in the proceedings. We have a further amendment then moved by Mr. Moreau and seconded by Mr. Macaluso. Shall the second amendment carry?

Mr. BASFORD: This deals with the investment powers of British companies, and I would like an understanding that we have stood clause 6 which deals with the investment powers of Canadian companies; and while I am prepared to pass clause 13, yet, if there are any amendments made to clause 6, we should be able to reopen the matter.

The CHAIRMAN: It is understood it will be done at any time until we complete the bill; amendments will be entertained by the Chair. Now, then, we are left with the amendments put forth by Mr. Moreau. Is it agreed? Shall clause 13 as amended carry? No, it stands.

Mr. LAMBERT: It is the same as clause 5. I think we should get an explanation.

The CHAIRMAN: That is just fine.

Mr. BASFORD: As long as we have an understanding I see no reason why we cannot pass it.

The CHAIRMAN: I suggest that we stand it, although I follow your point. Clause stands.

Shall clause 14 carry?

Are there any amendments to be proposed to clause 14? Let it stand.

Clause 14 stands.

Shall clause 15 carry?

Mr. LAMBERT: This relates to clause 5. This amendment corresponds to that proposed to subclause (8). If 5 stands, I think this should stand too.

The CHAIRMAN: All right, clause 15 stands.

I presume we are in the same position in regard to clause 16 then. If anyone has a question, I am sure that Mr. Humphrys would be glad to answer it as we go along. All right, shall clause 16 stand? Are there any questions on clause 16?

Clause 16 stands.

It is the same position with clause 17. Are there any questions of the witness on clause 17 before I stand it?

Clause 17 stands.

Shall clause 18 carry?

Carried.

Now we come to part two. Shall clause 19 carry?

On clause 19.

Mr. MOREAU: I have an amendment as follows:

That sub-clause 1 of clause 19 be amended by striking out lines 35 to 37 on page 24 and by substituting therefor the following:
1960-61, c. 16, s. 4(2)

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

Segregation of assets.

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine."

Mr. HUMPHRYS: This subclause would be the counterpart of the clause which appears as clause 9 in the bill. It should have been inserted here to apply to foreign insurance companies, because clause 9 as previously printed, applied to Canadian and British companies.

The CHAIRMAN: Does the amendment carry?

Amendment agreed to.

Shall clause 19, as amended, carry?

Mr. LAMBERT: Are you introducing clause 20?

Mr. HUMPHRYS: I am introducing a new clause 19 and renumbering the present clause 19 to 20.

The CHAIRMAN: This amendment says that we include a new clause 19 and renumber it. That is included in your amendment, Mr. Moreau, I take it?

Mr. MOREAU: Yes. I thought we had a renumbering amendment later on.

Mr. HUMPHRYS: I think it involves inserting a new clause 19 and re-numbering the present 19 to 20, and inserting two amendments in the new clause 20 which corresponds to the amendment previously explained, and then renumbering further the present clause after clause 20.

Mr. MOREAU: The new clause 20 is the old clause 19, and it has also been slightly amended.

The CHAIRMAN: We are going to get bogged down here with these amendments. Are you placing your first amendment?

Mr. MOREAU: Yes. I so move, to insert a new clause 19.

The CHAIRMAN: Is it carried?

Motion agreed to.

I understand there is a further amendment by Mr. Moreau.

Mr. MOREAU: I move that the present clause 19 be renumbered to 20, and then it would read "Paragraph (b) of section 1 of schedule 1 to the foreign insurance companies act is repealed".

The CHAIRMAN: Does that amendment carry?

Motion agreed to.

I understand that you have a third amendment to this clause.

Mr. MOREAU: Yes, striking out lines 5 to 7 inclusive on page 25 thereof, and substituting therefor "levied under the authority of a province, and so on".

That sub-clause 1 of clause 19 be amended by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Mr. HUMPHRYS: This relates to a fabrique, and it applies to foreign companies.

The CHAIRMAN: Does the further amendment carry?

Mr. MOREAU: On page 27, line 46.

The CHAIRMAN: Yes.

Mr. MOREAU: Striking out line 46 on page 27 and substituting the following:

That sub-clause 8 of clause 19 be amended by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Mr. HUMPHRYS: This is the same as the amendment previously discussed, and it enables a foreign company to invest in real estate for production of income, if leased to a municipal government.

The CHAIRMAN: Shall the amendment carry?

Amendment agreed to.

There are no further proposed amendments to clause 19. Shall clause 19, as amended, carry?

Mr. LAMBERT: No. Stand it in the same category as 5 and 13.

The CHAIRMAN: Stand it.

Clause stands.

Mr. MOREAU: You are standing the whole clause?

The CHAIRMAN: As amended. Shall clause 20 carry?

Mr. MOREAU: There is a renumbering amendment here that the bill be amended by renumbering clauses 20 to 39 of the said bill, and clauses 21 to 40. This is as a result of the insertion of new clause 19, and I so move.

The CHAIRMAN: Does this amendment carry?

Motion agreed to.

Shall clause 20 as amended carry?

Clause stands.

Shall clause 21, as amended, carry?

Clause agreed to.

Shall clause 22, as amended, carry?

Clause agreed to.

Shall clause 23, as amended, carry?

Mr. MOREAU: I take it you are using the old numbers.

The CHAIRMAN: Yes. Shall clause 23 as amended carry?

Clause agreed to.

Clauses 24 and 25, as amended, agreed to.

We are getting to the trust companies as to Mr. Robinette's submission. I understand that while Mr. Robinette's submission relates only to loan companies, if we accepted it, then we would have to deal also with trust companies, and it would appear that we have come to the end of the sections with which we can properly deal this morning. That being the case, and in view of the fact that we are meeting again tomorrow morning, it would appear to be in order that we now adjourn until 9.30 tomorrow morning in room 208 of the west block.

Mr. BASFORD: I understand that Mr. Humphrys will be in attendance at all sessions?

The CHAIRMAN: Yes, Mr. Humphrys will be present at all sessions. Thank you. The meeting is now adjourned.

(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964

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STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

(WEDNESDAY, NOVEMBER 18, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESSES:

(Mr. George Finlayson, Counsel for World Mortgage Corporation;
Mr. J. J. Ross LeMesurier, Wood Gundy and Company Limited.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Gelber	Monteith
Armstrong	Grafftey	More
Asselin (<i>Norte-Dame-de-Grâce</i>)	Gray	Moreau
Basford	Grégoire	Mullally ²
Bell	Greene	Munro
Blouin	Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Jones (<i>Mrs.</i>)	Otto
Caouette	Kindt	Pascoe
Chrétien	Klein	Rynard
Côté (<i>Chicoutimi</i>)	Lambert	Scott
Douglas	Leblanc	Tardif
Frenette	Lloyd	Thomas
Flemming (<i>Victoria-Carleton</i>)	Macaluso	Vincent
	Mackasey	Wahn
	McCutcheon	Whelan
	McNulty ¹	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

¹ Replaced Miss Jewett at the afternoon sitting, November 18, 1964.

² Replaced Mr. McLean (*Charlotte*) at the afternoon sitting, November 18, 1964.

ORDER OF REFERENCE

WEDNESDAY, November 18, 1964.

Ordered,—That the names of Messrs. McNulty and Mullally be substituted for those of Miss Jewett and Mr. McLean on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 18, 1964.

The Standing Committee on Banking and Commerce met at 9.30 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Aiken, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Grafftey, Greene, Habel, Lambert, Lloyd, Macaluso, McCutcheon, More, Moreau, Otto, Pascoe, Pennell, Wahn and Whelan. (18)

In attendance: Mr. George Finlayson, Counsel for World Mortgage Corporation; Mr. J. J. Ross LeMesurier, Wood Gundy and Company Limited; Messrs. Charles W. Jameson and W. Scott McDonald, Bank of Nova Scotia; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman introduced the witnesses. Mr. Finlayson and Mr. LeMesurier presented their views in opposition to Clause 40 of the Bill, and were questioned.

The questioning continuing, the Committee adjourned at 11.00 a.m. until 3.30 p.m. this day.

AFTERNOON SITTING

(17)

The Committee reconvened at 3.40 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Gray, Habel, Klein, Lambert, Lloyd, Macaluso, Mackasey, McCutcheon, McNulty, More, Moreau and Pennell. (18)

In attendance: The same as at the morning sitting.

The Chairman explained that he was unable to remain at the meeting and, at his request, Mr. Lloyd took the Chair.

Mr. Finlayson outlined certain amendments which his clients, World Mortgage Corporation, wished to see incorporated in the Bill. He later agreed to provide copies of the suggested amendments in writing for use of the Committee.

The Committee resumed questioning of Mr. Finlayson and Mr. LeMesurier.

At 4.20 p.m. the witnesses were permitted to retire and the Committee adjourned until 10.00 a.m., Thursday, November 19, 1964.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, November 18, 1964

The CHAIRMAN: I see a quorum, gentlemen. Would the committee please come to order?

We had anticipated that Mr. Robinette would be here to make submissions, but the untimely passing of his brother-in-law yesterday afternoon made it necessary for him to return to Toronto. In place of Mr. Robinette we have on my right Mr. George Finlayson who is the counsel appearing on behalf of the World Mortgage Corporation. Associated with Mr. Finlayson in the submissions, on his immediate right, is Mr. James Ross LeMesurier of Wood Gundy & Company Limited, and then Mr. Charles Jameson and Mr. W. S. McDonald, both of the Bank of Nova Scotia.

I will now invite Mr. Finlayson to make his opening. As I understand it his remarks will be directed to clause 40 of the bill.

Mr. GEORGE FINLAYSON (*Counsel for the World Mortgage Corporation*): Thank you, Mr. Chairman and hon. members of the committee. I am appearing on behalf of the principals in a proposed company which we seek to incorporate, to be known as the World Mortgage Corporation. The reason I say it is proposed is that at the present time Bill No. S-32 has been passed by the Senate which would incorporate this company; it has received first reading in the House of Commons, and I am advised it is the first bill to be dealt with among the private bills. Therefore, at the present time it is not a corporation as such.

However, we are appearing here today in opposition to clause 40 of Bill No. C-123, which appears at page 53 of the document I have. We are concerned with clause 40 in so far as it proposes to amend subsection (3) of section 68 of the Loan Companies Act. It is this new subsection (3) which we respectfully object to because if it becomes law it will have the effect of completely frustrating the new venture which we propose through the World Mortgage Corporation. In our submission it is not in the best interests of the lending institutions generally, and accordingly not in the best interests of the public.

The effect of new subsection (3) is twofold. First, it would require new borrowing limits to be applied to the total amount borrowed by the company rather than the amount borrowed less cash on hand and on deposit in chartered banks as at present. So far as that amendment is concerned, we do not take issue with it, or take any position at all. It is the second effect with which respectfully we take exception. The effect of this would be that where a loan company owns more than 10 per cent of the shares of the capital stock of a trust company, the borrowing limit which previously applied will now apply to the two companies taken on a consolidated basis.

This means that if a loan company is to own more than 10 per cent of the shares of the capital stock of a trust company, then it cannot calculate its borrowing limits on the old basis; that is, the present basis. The present basis would be to take the capital of the company, multiply it by four and that would give you the borrowing limit of the lending company. Now, it would be necessary to add the assets of the trust company to the assets of the loan company, and then deduct from those assets the participation of the loan company in the trust company which would give you your assets. You would then add the liabilities of the trust company to the liabilities of the loan

company which would give you your total liabilities. You deduct those liabilities from the consolidated assets in the way in which I have described, which would give you the capital figure of the consolidated companies.

However, when you have calculated this borrowing limit, you would have to deduct from that borrowing limit the amount of money actually borrowed by the trust company. I am advised by my clients and principals in this matter that if this were to happen, so far as the mortgage company is concerned at least, it would be completely impractical for it to operate.

So far as the World Mortgage Corporation is concerned I would like to tell you something about it. The proposed capitalization of the new company would be made up initially of \$2½ million in cash to be subscribed as follows: 10 per cent by the Bank of Nova Scotia, and the remaining 90 per cent will be subscribed by Wood Gundy & Company Limited, Burns Bros. & Denton Ltd., Harris & Partners Ltd., and Greenshields & Co. Ltd. These four will not participate in the 90 per cent in such a way to give any one of the four control.

It is proposed that the World Mortgage Corporation will offer its shares in exchange for shares of Eastern & Chartered Trust Company on a one for one exchange basis. If successful, this will mean that the capital will be increased by some \$25 million which will be represented by the investment which World Mortgage Corporation will have in the Eastern & Chartered Trust Company.

Mr. MOREAU: Which company would be increased by \$25 million?

Mr. FINLAYSON: The World Mortgage Corporation, because it will be acquiring shares of the Eastern & Chartered Trust Company which, for the purposes of my submission, we calculate at a value of \$50 a share. Once they have acquired these they will have in their treasury shares worth \$25 million. Those are round figures.

It also is anticipated that the offering to the present shareholders of Eastern & Chartered Trust Company will be taken up to an extent of more than 90 per cent. Of course, once this exchange takes place the World Mortgage Corporation will own considerably more than 10 per cent of the shares of Eastern & Chartered Trust Company and its borrowing limit will be restricted to virtually nothing by the proposed amendment.

In effect, instead of being in the position under the law as it now stands wherein we would be permitted to borrow up to four times the capital of the World Mortgage Corporation, we would find ourselves in the position where we could borrow virtually nothing. As it stands now under the present law, you would have \$2,500,000 in cash as capital and in addition to that you would have as capital some \$25 million which is invested in the Eastern & Chartered Trust Company shares, for a total in all of \$27,500,000.

Under the existing law we could then borrow up to four times that amount, or approximately \$100 million. If we are not in a position to borrow money in that order, there is no purpose in trying to function at all.

You may ask why is the World Mortgage Corporation a good idea and in what way would the frustration of this proposal not serve the public interest? So far as World Mortgage Corporation is concerned, in my submission, it serves the public interest in several specific areas.

(i) It would have the result of channelling public savings into the mortgage market, where such funds are badly needed. Chartered banks, the biggest repository of public savings, are restricted in this area.

It is generally agreed that sources of mortgage money, for the construction of new homes, and the purchase of older ones, are so limited as to represent a major problem in this area.

(ii) In a period of sustained business expansion, such as Canada is going through, there is always a danger in an overly-rapid development of lending

institutions. This danger is undoubtedly greater with respect to the mushrooming of small, thinly-financed "fringe" institutions, than with strong, well-founded companies which think in long-run terms.

(iii) In the past few years, more and more attention has been focussed on the problem of fostering economic growth in Canada without heavy dependence on foreign capital. If, in the mortgage market, well managed Canadian enterprises are not permitted to facilitate the flow of mortgage capital, it seems very apparent that United States capital, will: In this regard, it is a well known fact that a sizeable share of foreign capital coming into Canada in the past 8 or 9 years has gone into the real estate investment in one form or another.

The loan company, under the act, will be better able to raise funds for the expansion of the overall operations by issues of securities to the public, a means which is not possible for a trust company under existing legislation. This would have the effect of broadening the supply of moneys available to the mortgage market, and would create another Canadian financial intermediary, gathering domestic savings to facilitate the financing and ownership of Canadian resources.

(iv) Mortgage financing, it is generally agreed, represents a large part of total long term capital requirements in the Canadian capital market. In its presentation to the royal commission on banking and finance, Central Mortgage and Housing Corporation pointed out that the net amount of mortgage lending in Canada over the period 1954 to 1961, at 7½ billions, as almost as great as the combined increase in Federal, Provincial and Municipal bond debt in this period, and was actually greater than the increase in debt represented by corporate bonds and stocks.

(v) Recently, excessive interest rates, and other mortgage abuses have been receiving attention, particularly in Ontario. Experience in the consumer loan field, in which entrance of the chartered banks, on a nation-wide and substantial scale, contributed much to stabilizing and regulating this area, would indicate that a similarly beneficial result would follow the entrance of additional well managed, soundly run organizations into the mortgage field.

(vi) The loan company, and the new amalgamated trust company would be better able to service the general public in Canada than either of them could do if they were operating separately. Much broader facilities would be available to the public, since in the same office they will find the combined services of both a loan company and a trust company.

(vii) In many respects the business and operations of loan and trust companies complement each other, and in this instance the combined operations would be more efficient from a business point of view. Significant potential savings could be effected, and the cost of service to the public reduced by the performance of existing trained personnel of dual functions in many cases, and through the sharing of general overhead, rental of space and other facilities.

(viii) Present shareholders of Eastern & Chartered Trust Company will be given the opportunity to share in the ownership of an expanded operation.

(ix) The joint operations will be enabled to compete more successfully with the two loan and trust companies presently enjoying a unique privilege based, so far as we know, only on historical grounds.

Really, the whole point of our submission before this committee is that there is no reason the legislature, with respect, should consider that an investment in Eastern & Chartered Trust Company shares would not be as sound as one in, say, the Royal Bank or International Nickel, or any other sound industrial stock.

In our submission there is no reason to penalize a loan company for investing its capital in such a security any more than you would penalize a loan company for investing its capital in any other worth while stock.

The Eastern & Chartered Trust Company is going to continue to operate as a trust company as it has done for many years. The joint operations of the Eastern & Chartered Trust Company with the World Mortgage Company should strengthen both.

Of course, there is nothing unique about this type of joint operation. As I indicated earlier, it would put the World Mortgage Corporation in a position where it could compete with the joint operations of two other companies. It is common knowledge that the Canada Permanent Mortgage Corporation owns the Canada Permanent Trust Company. It is also common knowledge that the Huron & Erie Mortgage Corporation owns the Canada Trust Company. No objection, apparently, has been taken in the past to this type of operation and, in my respectful submission, there is no reason that objection should be taken now.

It must be kept in mind that all we are permitted, as of right, under the present legislation and in fact under the legislation as amended if the amendment goes through, is to borrow four times capital. It is my respectful submission that this is a very conservative borrowing base. I draw to your attention that trust companies can borrow, as of right, up to $12\frac{1}{2}$ times their capital and there is no limit to the extent of a bank's borrowings of this nature.

As I say, the whole point really turns on the quality, I would say, of the type of investment which the proposed loan company is going to rely on as capital.

I would ask Mr. LeMesurier, who is an authority in this field and who is associated with Wood Gundy & Company Limited, to answer certain questions I would direct to him, so that you would have the benefit of his views on this and similar points. May I do this with your permission?

The CHAIRMAN: Yes; that will be in order.

Mr. FINLAYSON: Mr. LeMesurier, as I understand it you are associated with Wood Gundy & Company Limited.

Mr. JAMES ROSS LEMESURIER (*Wood Gundy & Company Limited*): Correct.

Mr. FINLAYSON: How long have you been associated with them?

Mr. LEMESURIER: I have been in the investment business for the past 13 years and more recently with Wood Gundy & Company Limited.

Mr. AIKEN: Mr. Chairman, I think some of us are a little perturbed about the procedure. Generally it is the committee members who ask the questions. I wonder whether perhaps some other procedure might be adopted.

Mr. FINLAYSON: Mr. Chairman, I am prepared to do it in any way. I must apologize because I never have appeared before this committee.

Mr. OTTO: I think if Mr. LeMesurier would just give us the content of his answers we would listen to him.

The CHAIRMAN: It was not my intention to frustrate the questioning of the witnesses by the committee. I am in the hands of the committee. Personally, I could see no objection to it. He was just going to elicit some information before the committee and he thought he could tie it in more precisely in this way. However, I agree that it is a new departure, but that in itself I do not think should wash it out. It is whatever the committee wishes. If you prefer that it should not be done in this way, I will so direct the witness.

Mr. OTTO: This procedure would be a little too dramatic this early in the morning.

Mr. LEMESURIER: Gentlemen, I think the general area on which Mr. Finlayson wished our opinion as investment people is is there any real reason the shares of Eastern & Chartered Trust Company, which will be owned by the World Mortgage Corporation, should be excluded from the borrowing base of World Mortgage while the shares of any other industrial company could be included. In other words, there seems to be a feeling in some area that because Eastern & Chartered Trust Company already has a substantial debt of its own, therefore the shares are a risky investment and consequently are not a sound investment on which to base further borrowing by the future parent company.

I would submit that there is a certain fallacy in this. First of all the trust company is a regulated company. In fact the present bill proposes to increase its borrowing powers from $12\frac{1}{2}$ to 15 times, so it is hard to see that the shares of the trust company are risky because of the amount of debt it carries. I think this is the nature of trust company business; it is a sound and stable business and can carry a lot of debt.

I would submit there might be paper companies which had a two for one borrowing ratio—that is 66 per cent debt and 33 per cent equity—which would be far more risky shares upon which to form part of the borrowing base of World Mortgage than would the shares of Eastern & Chartered Trust. A steel company with \$1 of debt and \$1 equity is a more risky investment in most cases than the shares of a trust company even though the shares of a trust company may have debt to the extent of 15 times its equity.

This particular company has a very long history; at least its two component parts have. Eastern & Chartered Trust is an amalgamation of The Eastern Trust Company which was incorporated in 1893 and the Chartered Trust Company which was incorporated in 1905. They have had many years of successful operation; their dividends are stable and it is a well managed company. I submit that the shares of this company are perfectly good shares and have real value and should not be excluded from the borrowing base of World Mortgage Corporation. There is real value in these shares, just as much as there would be if there were an investment in the shares of any industrial company.

On the basis of the proposed formula you have to deduct the liabilities of both companies in working out the joint amount of borrowing which the company can accomplish. If the shares of any other company were owned by World Mortgage Corporation there would be no need to deduct the debt of that corporation from the borrowing power, you might say, of World Mortgage Corporation. Therefore, why should the debt of a trust company in effect be deducted from the joint borrowing power?

I feel there is a great asset which trust companies have which does not show on their books; that is what is known as their E.T.&A. business—the executor, trust and agency business. A trust company like Eastern & Chartered Trust has \$210 million of assets of which about \$14 or \$15 million is its equity. But, over and above that, it has under its control an additional \$470 million of assets on which it is earning some return, and it is receiving revenues which become profits for administering these funds. But, in no way is that reflected on the balance sheet of the trust company or, at least, in the equity portion of it.

I would submit to you, if you are looking at security—that is, are the shares held by World Mortgage Corporation in Eastern & Chartered Trust Company suitable investments upon which to borrow—that there are shares of very few companies which would be a safer investment than shares of trust companies. Shares of trust companies are stable—at least, the operations are very stable; it is not a fluctuating business like the steel business, the paper business or the

merchandising business, and yet all the shares of all these companies can be included. We see no reason why the shares of a trust company should not be included in the borrowing base of a loan corporation.

The question also has been raised: Are the future creditors of World Mortgage Corporation prejudiced in any way by the fact that Eastern & Chartered Trust Company shares will form a large part of the assets of the World Mortgage Corporation in the early years. I would submit to you, if we look at this matter in stages, as the World Mortgage Corporation goes out in the capital markets and, say, raises its first \$10 million of debenture money, at that time the proceeds of that \$10 million debentures will be invested largely in first mortgages. There may be a portion of it invested in short term government bonds, which can be cashed in, if necessary. But, as I say, the larger portion will be invested in first mortgages.

So, you then look at the security which the holders of the mortgage corporation debentures have. Well, they have approximately \$10 million of mortgages as security for their debentures. Those mortgages themselves have a safety factor in them owing to the limiting effect of the proposed 66 $\frac{2}{3}$ percent figures. Your bill proposes 75 per cent, and over and above that there is \$25 million of Eastern & Chartered Trust Company shares. There is \$35 million of protection against the \$10 million. Now, that is true in the early stages, so there is adequate protection in the early stages when the company starts to issue debentures, even though the major portion of World Mortgage Corporation's assets are in the form of Eastern & Chartered Trust Company shares. This is taking the near extreme. If the time ever came—and the World Mortgage Corporation at this time is not asking to go this far—when World Mortgage Corporation had debt outstanding equal to 15 times the amount of its capital, and this would only be with the approval of the superintendent of insurance and with the approval of treasury board,—we would have, in theory, \$400 million of debt outstanding and at that time the \$25 million of Eastern and Chartered Trust Company shares would be an insignificant portion of the total \$400 million assets of World Mortgage Corporation, so there is no real risk there. It is an insignificant portion. Also, at that time, if they ever got to a figure of \$400 million of borrowed moneys outstanding the proposed amendments to the act provide that \$100 million of that could be in common stock. The fact that \$25 million of this common stock portfolio were invested in Eastern & Chartered Trust Company shares does not seem to me to prejudice the position of the creditors in any way.

The World Mortgage Corporation is asking at this time that it be allowed to include in its borrowing base the shares of Eastern & Chartered Trust Company, which will be approximately \$25 million. Also, it has no intention at the present time of asking the Department of Insurance to increase its borrowing ratio above four times. It proposes to wait and see how the corporation grows and develops, and at some future time presumably, after it has raised \$100 million of debt money, which would be approximately four times, it will consider whether it wants to go higher. But, at that time the Superintendent of Insurance and Treasury Board have a discretion as to whether they feel this corporation has had the growth, the development, the proper mortgaging, and lending policies and the proper management and sponsorship to warrant a further increase in its borrowing base. That is, this proposal would not be giving the corporation the right as of now, if the bill is passed, to have a 15 times borrowing power. Four times certainly is very conservative, and that is all the corporation is asking for now. It is really conservative in so far as the present bill proposes to give the superintendent of insurance discretion to raise the borrowing limit from 12 $\frac{1}{2}$ to 15 times.

As I say, four times is extremely conservative. In respect of banks it is about 20 times now—and I am referring to all the chartered banks. Their liabilities to the public through ordinary deposits are very close to 20 times their capital. Ordinary finance companies, which are not regulated in any way, borrow up to six to eight times their equity capital in the open market, and yet, the assets of these finance companies, which is largely consumer paper, are not nearly as secure as the assets which World Mortgage Corporation would have on the asset side of its balance sheet, which will consist mainly of mortgages. I think from an investment point of view we can see no real reason why the shares of Eastern & Chartered Trust Company should be excluded from the borrowing base of the World Mortgage Corporation.

That is all I have to say at this time. Are there any questions?

The CHAIRMAN: I have Mr. Moreau first, followed by Mr. Otto and then Mr. Lloyd.

Mr. MOREAU: If I understand the proposal you are putting before us correctly, by an investment of \$2½ million, and then an exchange of paper stock with Eastern & Chartered Trust Company, you then would be under the old regulations and allowed to borrow \$100 million.

Mr. LEMESURIER: That is correct, although I respectfully take exception to the use of the expression "an exchange of paper". The shares of Eastern & Chartered Trust Company are presently trading in the market somewhere in the area of \$50, although I do not know the precise figure.

Mr. MOREAU: What consideration would you be giving for the shares?

Mr. LEMESURIER: It would be participation in the World Mortgage Corporation.

Mr. MOREAU: Although there is \$2½ million invested?

Mr. LEMESURIER: Right. But do you not understand, with respect, what is happening? Instead of someone coming in and giving us \$50 for a share in the World Mortgage Corporation, to which there would be no objection to—this is how you raise the capital. People are going to come and give us a stock that is worth that much.

Mr. MOREAU: What is the capitalization of the World Mortgage Corporation?

Mr. LEMESURIER: The initial dollar capitalization would be about \$2,750,000.

Mr. MOREAU: How many shares?

Mr. LEMESURIER: I have my notes here. That will end up as 50,000 shares at \$50 or \$55. If it is \$50 it will be \$2,500,000 of the initial cash capital.

Mr. MOREAU: As I understand it, with a \$2½ million investment and using \$25 million worth of shares, if you like, of Eastern & Chartered Trust Company, you then would be borrowing \$100 million at a ratio of four times to one, and then you would expect to incur liabilities up to \$100 million?

Mr. FINLAYSON: To a maximum of that figure.

Mr. MOREAU: It would seem to me these initial shares in Eastern & Chartered Trust Company already have certain restrictions placed on them and perhaps you have incurred the maximum liabilities under the regulations in respect of these shares. In that case you would be sort of pledging them again.

Mr. LEMESURIER: No, there are no restrictions on the shares. I think the point, with respect, that you are making—

Mr. MOREAU: Well then, the capital they represent.

Mr. LEMESURIER: The capital already has been borrowed on in the sense that the Eastern & Chartered Trust Company can borrow and has borrowed up to close to 12½ times its capital, but we submit that this still leaves good

value in those shares; that is, the company is a going concern, has a long record and successful management. There is value in these shares over and above the book value. It is a going concern.

Mr. MOREAU: I would expect that, but it seems to me that the capital at least which the shares represent essentially, and you can argue about whether the borrowing limits are reasonable or not, is already pledged in so far as the regulations are concerned, up to $12\frac{1}{2}$ times.

Mr. LEMESURIER: I think, so far as Eastern & Chartered Trust Company is concerned, it is fully borrowed, and this proposed change, which you are being asked to make in bill No. C-123, will not affect Eastern & Chartered Trust Company in any way. It gives Eastern & Chartered Trust Company no more borrowing power and also it does not affect its equity. But, what it does do is recognize that the shares of Eastern & Chartered Trust Company, which would be held by the World Mortgage Corporation, have very real value.

Mr. MOREAU: I accept the fact that Eastern & Chartered Trust Company shares have real value. But, you said earlier that they were the same as other industrial. Yet, other industrials, in my understanding, are not regulated in the same way in what they can do with their capital and what they cannot do with it, and the very nature of the trust company has placed certain restrictions on that capital. I do not follow you when you say they are the same as any other industrial. Surely common stocks in industrial companies such as were mentioned, International Nickel and so on, are not in the same category in any way.

Mr. LEMESURIER: I would think, for purposes of the borrowing base of the World Mortgage Corporation, you have more security in trust company shares than you would have in industrial shares. The trust company is a regulated company. It has to meet approved statutory limits. An industrial company does not. An industrial paper company can go out and borrow. For every \$5 million of capital it has it can borrow, if people will put the money up, \$10 million, say, of debt money. This makes the shares risk shares, with a slight change in foreign exchange, shares of a paper company can go down much more quickly even though they have only a two times borrowing ratio.

I do not think there is any reason why trust company shares should be excluded because they have debt. They come within well defined and generally considered safe limits. Now, there is far more risk in allowing a mortgage company to indiscriminately buy on the open market the shares of a company that is not regulated. There is more risk in these shares than there is in trust company shares as part of the borrowing base.

Mr. MOREAU: I appreciate the risk factor and so on, but surely that is part of understanding when you buy common shares in an industrial company. But, at least, the stock of the trust company and the capital of the trust company are in rather a special category here, and I think we have appreciated that in the way it has been treated under the legislation. But, it seems to me you have been making a good argument for the changes in the borrowing limits placed on trust companies and mortgage companies but then, instead of proposing changes in the limit you are asking us to authorize a device whereby we would be helping you circumvent, in a sense, the limits we now have. This seems to be my interpretation of what you are trying to do.

Mr. LEMESURIER: I do not believe I understand you when you say "circumvent the present limits". I do not think there is any attempt to do that.

Mr. MOREAU: Not to circumvent the present limits but certainly to circumvent what the intention of the regulations would be in that we are

attempting to place borrowing limits on capital in trust and mortgage companies, and here we are faced with what in a sense appears to me to be some form of pyramiding action of the same capital, which would appear to be a rather dangerous practice.

Mr. LEMESURIER: I do not think you can say it is a dangerous practice to include the shares of a well managed trust company as part of the borrowing base of a mortgage company, if you accept the fact that these shares are top grade securities and pretty safe investments. And, remember, trust companies are regulated industry. This is a very strong point in favour of the inclusion of the shares of the trust company.

Mr. MOREAU: But this is essentially a pyramiding device.

Mr. LEMESURIER: I would not accept that proposition. I am not sure whether I am supposed to accept things or not, but I do not agree with that.

Mr. MOREAU: I have one other point. You mentioned the unregulated finance companies and I would suggest that two wrongs do not make a right, and that that is not an argument. I think most finance companies are under a provincial charter.

Mr. LEMESURIER: They may be but how much they can borrow that is set by private discussions between the underwriters and the company. There is no government limit as to how much a finance company can borrow on its equity.

Mr. MOREAU: But they are under provincial control rather than dominion control.

Mr. LEMESURIER: They may be under control as far as the rates of interest, they charge to the public are concerned, and what disclosure they have to give, but that is on the asset side of their balance sheet.

Mr. MOREAU: They are not within our jurisdiction; they are incorporated under a provincial charter.

Mr. LEMESURIER: Yes, but the case we make is that World Mortgage Corporation could invest in those shares and it would not have to deduct a portion of the debt of the finance companies, which are unregulated.

Mr. FINLAYSON: If I could add a word to what Mr. Moreau was saying, it appears to me, with respect that everything you have said in respect of the undesirability of having the trust company shares as a part of the portfolio of capital of the loan company would apply with equal force if it was Royal Bank of Canada stock because the stock of the Royal Bank of Canada certainly reflects the capital and reserves of the Royal Bank of Canada.

Mr. MOREAU: But there are certain liquidity requirements and so on in respect of bank assets.

Mr. LEMESURIER: But, the Royal Bank of Canada has so much capital in reserve for its borrowing, and if you are going to say there is any kind of pyramiding between a trust company and a loan company the same argument would apply between the Royal Trust and the loan company; there is no difference. The shares of the Royal Bank of Canada are also subject to debt. You use the expression "pyramiding" in the same way with respect to the shares of Eastern & Chartered Trust Company.

Mr. MOREAU: Would Eastern & Chartered Trust Company also be using more World Mortgage Corporation stock as part of their assets?

Mr. FINLAYSON: No, they could not.

The CHAIRMAN: Would you proceed, Mr. Otto.

Mr. OTTO: Mr. LeMesurier, earlier you said in your argument—and correct me if I am wrong—that in actual fact if, say, International Nickel owned

Eastern & Chartered Trust Company and the World Mortgage Corporation owned the shares in International Nickel, then it could count the shares they had in International Nickel as their base without any restriction.

Mr. LEMESURIER: No. The statement that is made referred to this. If World Mortgage Corporation, instead of owning shares of Eastern & Chartered Trust Company owned shares of International Nickel, it could borrow up to $12\frac{1}{2}$ times its International Nickel base, but it cannot borrow $12\frac{1}{2}$ times the Eastern & Chartered Trust Company base.

Mr. OTTO: Then what you are saying is that it is possible right now for World Mortgage Corporation to trade its shares with International Nickel and to say: "Here are shares in Eastern & Chartered Trust Company; give us shares in International Nickel." Therefore, you could circumvent the regulations here, if you wanted to. We are not arguing that if it can be done in that way you should not be entitled to do it legally and properly.

Mr. LEMESURIER: I am not saying that would be circumventing.

Mr. OTTO: Well, I am not saying it would be circumventing; I say you could, if you wanted to, without circumventing, but you must make a deal with International Nickel and say: "Here are the shares we have in Eastern & Chartered Trust Company; give us the equivalent amount of your shares", and then you can count these shares in your assets.

Mr. LEMESURIER: Yes.

Mr. OTTO: You see, I am trying to find the purpose of the restriction. I am on your side. What is the purpose of the restriction in connection with not being able to consider the shares that World Mortgage Corporation owns in Eastern & Chartered Trust Company, if it can be done. As you say, it can easily be done.

Mr. LEMESURIER: While you are on the question of exchange of shares, it is exactly the same, if they exchange shares, which I believe Mr. Moreau referred to as an exchange of paper or go out and sell treasury stock to the public, raise \$25 million cash and buy the shares with the cash. In this way, the net effect is exactly the same as exchanging the shares to start with. But, it is not a paper transaction. There is real value behind these shares. If Eastern & Chartered Trust Company were to be acquired by World Mortgage Corporation, World Mortgage Corporation could raise \$25 million cash from the public and then make a cash offer for the shares. The net effect would be the same. As reference was made to an exchange of paper I felt possibly there was a slight feeling that this was a bit of a sham transaction. It would not be.

Mr. MOREAU: I was not suggesting that it was a sham transaction. I am sure it is a very real one.

The CHAIRMAN: Would you proceed, Mr. Lloyd.

Mr. LLOYD: I am very concerned about procedures here. Some very challenging statements have been put forward by the witnesses today. Comparisons have been made with the experts on credit, the banks, which come under a different field from the trust companies. I do not think some of the comparisons have been taken into account. As you know, there is the difference of government control, through the operations of the Bank of Canada, for example.

I am reluctant to question the witnesses without having a transcript of the evidence that has been given, because certainly their explanation has raised a number of elements which require some reflection in order to ascertain the significance of their observations. I do not think, because of that, that I am in a position to ask some leading questions at this time. In fairness to them, I would prefer that their evidence be taken and then I presume we may have an opportunity to question them further after we have had an opportunity to examine the transcript of the evidence which they have given. Would this be possible?

The CHAIRMAN: I would hope that we would move along with this bill. I do not know how long it would take to obtain the transcript, but I know that the government wishes that there be a determination upon the bill one way or the other as quickly as possible.

With respect, I would ask you to hold in abeyance your request that we wait for a transcript of the evidence, until the committee has asked the questions, and then at that time we could determine the question you raise.

Mr. LLOYD: Then, may I put one question to Mr. Finlayson? In general are you using the World Mortgage Corporation circumstances as a case in point to illustrate that this law in principle is not right; you are not asking for restrictive application for the World Mortgage Corporation, are you?

Mr. FINLAYSON: No, we are not. We are saying that the amendment as such is impractical.

Mr. LLOYD: You are using the World Mortgage Corporation as an illustration?

Mr. FINLAYSON: That is where it hits us, because that is what we are. In fact, there are already two organizations which will be affected by this. Just what the practical effect on them will be, I do not know, because they have been operating for a long time. However, certainly we are asking that the amendment as such either be modified or withdrawn generally.

Mr. LLOYD: Mr. Chairman, I am not going to pursue any questioning. Certainly the wishes of the committee will naturally be followed by me. I am not taking any stand to hold up the bill. I just say that I would require time for careful reflection after seeing the evidence they have given before I could comprehend what the witnesses have put forward.

Mr. LAMBERT: Mr. Finlayson, do you not agree that it is theoretically possible to engage in a pyramiding operation on the organization of a new trust company and a new loan company as part of a framework? I think this is what the legislation may have been designed to curb. In other words, if you were to go out and raise \$2 million by the issuance of shares of a trust company which in turn would use that money or part of that money in a loan company, both of them, on the basis of this \$2 million, then would be able to go out—one without funds—and borrow up to whatever figure they wanted on that original \$2 million.

Mr. FINLAYSON: May I say two things in answer to that? I agree that it is theoretically possible that could happen. If the legislature is concerned about that happening, and imposes restrictions, then my submission is they have gone much too far and that other language could be employed to prevent the type of situation you have suggested.

My second point is that I say you do not really, as a practical matter, get into any difficulty so long as you are restricted to four times the capital. There is no risk involved to the lenders to such an institution when it is restricted to four times the capital. That is a very conservative base.

Now, before you can get any increase above the four times limit, it is necessary to satisfy the superintendent of insurance, Mr. Humphrys, that you should receive such an increase, and of course, also, it must be approved by the treasury board. It seems to me that in restricting fly-by-night outfits or companies which have an irresponsible base, if I may use this expression, that that is where Mr. Humphrys comes in. He can look at not only the capital structure, but also the management of the company and the type of investments it makes, and if he feels the security is not there for creditors, then he can refuse to permit any such expansion. As a practical matter, you are not going to have any difficulty, because of the supervision of Mr. Humphrys and his department, with any increase over the four times limit.

Mr. GRAFFTEY: For clarification purposes, may we recoup here? We have a situation where a trust company is giving its shares to the mortgage and loan company in exchange, may I say, for a controlling interest in the mortgage and loan company.

Mr. LEMESURIER: It is not the trust company which is giving its shares; it is the shareholders. It is the outstanding shares which are being exchanged by the shareholders of the trust company for World Mortgage Corporation shares.

Mr. GRAFFTEY: In a practical vein this will result in control of the mortgage and loan company by the trust company?

Mr. LEMESURIER: That is correct. It is the World Mortgage Corporation which will control Eastern & Chartered Trust Company if its exchange offer is fully taken up.

Mr. GRAFFTEY: If the company was holding shares in a non-financial company or a non-loan company or a non-trust company—as you said before, ordinary industrial blue chip common shares—there would be no problem at all in terms of its borrowing or lending power being limited?

Mr. LEMESURIER: Yes, if they have a dollar investment in the shares of an ordinary industrial company they could go up to four times or probably $12\frac{1}{2}$ or 15 times later.

Mr. GRAFFTEY: Before I get to the point of my final question to you, what we should really be considering today is the fact that the trust company's books have been audited by competent auditors and, as you tell us today, on the market their shares are listed at approximately \$50. This is the net equity value of these shares on the market, approximately.

Mr. LEMESURIER: Yes.

Mr. GRAFFTEY: It seems to me that you feel there should be no other consideration of what is behind it in terms of whether this is based on the fact that it is a loan company or industrial company. You fail to see why special consideration should be placed on the fact that it is a loan company or trust company as opposed to an industrial or mining company.

Mr. LEMESURIER: That is correct.

Mr. GRAFFTEY: In the past what have been the basic reasons given to you, apart from this clause, in respect of why there should be basic differences and restrictions.

Mr. LEMESURIER: I believe the main reason is people feel that the trust company is carrying a full load of debt now and there is some concept that perhaps the shares are risky and that if those shares were used as a base to borrow further the whole structure would be a risky structure.

Mr. GRAFFTEY: This perhaps is an answer I should know, but under the regulations could a mortgage and loan company enter into this type of arrangement—perhaps the word "arrangement" is a loose word—with any other kind of Canadian company; in other words, there is a practical case of control involved here. Could a mortgage and loan company enter into this kind of an arrangement with another company other than a trust, loan or finance institution?

Mr. LEMESURIER: It could not invest in more than 30 per cent of the stock of any one company, but it could do a share exchange deal with any company which had a market value of around \$80 million or \$100 million, and they could acquire a block of \$25 million worth of that stock. They could borrow there four times this amount, and with the approval of the superintendent up to a higher figure.

Mr. GRAFFTEY: And to all intents and purposes, the practical issue could evolve into a question of the whole company being involved?

Mr. LEMESURIER: That is correct, if it were a 30 per cent block. I do not think this is a practical question, because there will be very few mortgage companies buying a large block of, for instance, B.A. Oil.

Mr. GRAFFTEY: From what you have said, Mr. Finlayson, as Mr. Lloyd pointed out, there is a real worry, but you feel that this clause could be reworded to prevent this kind of a situation coming about.

Mr. FINLAYSON: That is my view. I just think the drafters of the bill have gone much too far. They have prevented a thoroughly legitimate situation, whereas they may be worrying about things which could be prevented; they have gone too far.

Mr. AIKEN: I think it was made clear that the Eastern & Chartered Trust Company will not be issuing treasury stock.

Mr. LEMESURIER: That is correct. There is no change in the capitalization of Eastern & Chartered Trust Company.

Mr. AIKEN: The present owners of shares in Eastern & Chartered Trust Company will merely in effect be exchanging them for shares in World Mortgage Corporation as a result of the exchange.

Mr. LEMESURIER: That is correct.

Mr. AIKEN: So they will then own shares in both Eastern & Chartered Trust Company and World Mortgage Corporation?

Mr. LEMESURIER: They will own shares directly in World Mortgage Corporation and through their shareholdings there, indirectly in Eastern & Chartered Trust Company.

Mr. AIKEN: In other words, it will not be a partial purchase; it will be a complete transfer of shares so far as the shareholders in Eastern & Chartered Trust Company are concerned.

Mr. LEMESURIER: It could be a complete exchange; they will not likely be turning over half of their shares in the Eastern & Chartered Trust Company. There will be an offer made to them to exchange all of their shares.

Mr. AIKEN: To all shareholders?

Mr. LEMESURIER: Yes. It is up to the individual shareholder of Eastern & Chartered Trust Company whether he accepts the offer in full, in part, or rejects it completely. There is no intention to force them; it is entirely voluntary.

Mr. AIKEN: As I understand this subsection 3, the purpose really is to prevent two companies—that is a mortgage company and a trust company together—doing what one of them could not do alone; in other words that the combined borrowing of the two companies would not exceed what one company could do if it stood on its own. Is that in effect what World Mortgage Corporation will be doing?

Mr. FINLAYSON: In the first place, I do not agree with your interpretation of what it is. It is not just a question of consolidating the balance sheets of two companies and saying that the combined borrowings of the two companies cannot exceed four times the combined assets. It goes further than that. It says that you combine the assets of the two companies and you combine the liabilities of the two companies, but from the combined assets of the two companies you must deduct the participation of the lending company in the trust company, or vice versa, so in our case you would have to add the assets of the Eastern & Chartered Trust Company to the assets of the World Mortgage Corporation, and then deduct the \$25 million which reflects the investment of the loan company in the Eastern & Chartered Trust Company. Actually the combined companies are worse off than they would be separately.

Mr. AIKEN: So that in fact in your opinion the section that is drafted goes further than to restrict the two companies from doing together what one could do alone?

Mr. FINLAYSON: What it is really doing is to say what is regarded by everybody as an asset, namely \$25 million worth of stock in the Eastern & Chartered Trust Company, is no asset at all. It is taking it right out of the assets of the combined balance sheets of the two companies. It is no asset at all for the purpose of borrowing.

Mr. AIKEN: No, but loan companies and trust companies are placed by this legislation in a separate category. Maybe we are talking about different things but my understanding of the section is that they cannot, by a manipulation of holdings between a loan company and a trust company, exceed what one company can do if it were on its own feet. I think that is a good provision. Are you telling me that this goes further than that, and that if the World Mortgage Corporation were alone it would be in a better position than if the two were combined?

Mr. FINLAYSON: No, I do not say that. This is just hypothetical, but if all the subsection said was that the two companies together cannot do more than each one individually, I do not think we would have any objection. I do not think we should be in a different position if such a relationship were established between the Eastern & Chartered Trust and the World Mortgage Corporation than if we were just the World Mortgage Corporation.

Mr. AIKEN: Can you suggest to us, if not in detail then in general, how this subsection could be amended or changed so as to cover the situation that I have mentioned?

Mr. FINLAYSON: Yes, just take the first two brackets and strike them out. This appears on page 53, line 27.

Mr. AIKEN: Take both of the brackets out, you mean, that is both in "excluding therefrom shares of the capital stock of the trust company", and "excluding therefrom shares of the capital stock of the loan company".

Mr. FINLAYSON: Yes, take out both sets of brackets.

Mr. AIKEN: I think we understand what your proposal is.

There is one more question I would like to ask. Can you tell me how your situation is different from that of the Huron and Erie Mortgage Corporation? Is it because they are an established corporation?

Mr. FINLAYSON: As far as I know we are not in a different legal position. I do not know why they are not objecting or whether they are going to object but they have been operating for a long time and we are just getting started. They may have a dozen reasons why they can operate within these restrictions.

Mr. AIKEN: At least Huron and Erie Mortgage Corporation has had a representative here. When we were discussing the question of the loan ratio on real estate mortgages we had a representative from that company here before this committee.

The CHAIRMAN: You are quite right on that. Mr. Millar was here, but not on this point.

Mr. AIKEN: This is what I am saying. He was here to present a brief on this bill, so presumably they have no complaint with it. I am wondering why.

Mr. FINLAYSON: I cannot speak for them. If they have considered it and decided it does not affect them it is only because they have been operating for so long and they have their capital account in such a state that apparently it is not going to affect them.

Mr. AIKEN: This probably applies to the Canada Permanent Trust Company and others. Their capital structure is already settled and approved by the superintendent, and they have no problem. I would assume this, at least.

Mr. GELBER: Mr. Finlayson, I understand that the Eastern Trust Company issues a million dollars worth of treasury stocks. I believe it is paid in full. Can it use that as a basis for borrowing?

Mr. FINLAYSON: You mean right now? Does it receive cash for it? I see no reason why not.

Mr. GELBER: If those millions of dollars worth of shares being subscribed by the public were subscribed by the World Mortgage Company, could they borrow on the basis of that company? So that the Eastern Trust can borrow to the full based on its capital stock issues?

Mr. FINLAYSON: My problem will also be with the Eastern & Chartered Trust.

Mr. GELBER: The Eastern & Chartered can borrow to the full based on its assets. Your problem is with the holding company.

Mr. FINLAYSON: That is right.

Mr. GELBER: Do you not feel that there is a question of escalation involved here, and that you are considering borrowing twice on the same assets?

Mr. FINLAYSON: The whole point we have been trying to make, with respect, is that we do not regard it as borrowing twice because we do not regard stock in the Eastern & Chartered Trust Company as being a duplication of the capital in the Eastern Trust Company.

Mr. GELBER: Now, World Mortgage in turn can go and sell its shares to another loan company, and another loan company could use World Mortgage shares also. Is that correct?

Mr. FINLAYSON: Under the present law, of course, another loan company is restricted in the number of shares that it could purchase from the World Mortgage.

Mr. GELBER: But you are advocating it. You are saying a holding company should be able to use its investment in the loan company as a basis for borrowing, regardless of the fact that the first company had borrowed to the limit. Is that not what you are advocating?

Mr. FINLAYSON: No, we do not advocate that at all. I appreciate that some of the members of the committee and perhaps the drafters of the bill are concerned about this type of escalation to which you are referring. I am not saying it is undesirable that that be curbed. What I am saying is that you have gone much too far, or at least the drafters of this legislation have gone much too far, in the language they have employed. If you are trying to get rid of that type of operation, it can be done, but in attempting to do it you have used too big a hammer, if I may say so, and you are thwarting commercial ventures such as we are putting forth which are completely legitimate and sound.

Mr. GELBER: But you are against escalation, are you not?

Mr. FINLAYSON: Yes, unlimited escalation. I keep getting a bunch of hypothetical questions.

Mr. GELBER: That is not hypothetical. This is a real situation right here. You have a loan company which is owned in part by another loan company. That is not hypothetical.

Mr. FINLAYSON: This is a real situation and one that I am prepared to stand by 100 per cent, but then you talk about turning around and selling shares of the World Mortgage Corporation to another lending company, and so on.

Mr. GELBER: The same principle is employed here.

Mr. FINLAYSON: It is not the same principle because you keep multiplying. If you want to avoid that multiplicity or escalation, then draft the legislation accordingly. I am not opposed to restricting what you are suggesting but I just say that you do not need to use this broad language.

Mr. GELBER: What would you propose that we should include in the bill to avoid escalation and yet protect the position you are advocating?

Mr. LEMESURIER: Under the proposed bill C-123 I do not believe a loan company can own a loan company or that a trust company can own a loan company. All that is permitted is that a loan company can own a trust company. Also, a trust company cannot own a trust company.

Mr. GELBER: The borrowing power of each company is limited by the law, so it is the same thing.

Mr. LEMESURIER: You cannot keep on pyramiding loan, trust, loan, trust or loan, loan, loan. This stops at the loan above the trust company level.

Mr. GELBER: We do have a pyramid here in this case.

Mr. LEMESURIER: I would prefer to refer to it as the admissibility of the Eastern & Chartered Company shares in the assets.

Mr. GELBER: That is the principle with which you are dealing.

Mr. FINLAYSON: As I said before, in answer to a question by Mr. Moreau, your question would be as apt if we were trying to acquire shares in the Royal Bank. The suggestion seems to be that you should not have, as part of your capital base, the shares of the capital stock of any company which in turn is using a capital base in order to borrow money. If that is the case, you should exclude in this proposed amendment not only the capital stock of a trust company but any bank or finance company or any other company which operates on the same basis. It appears that that is not really what is concerning the drafters of the legislation.

Mr. LEMESURIER: The only thing we are asking for, Mr. Gelber, is that the loan company be permitted to own the trust company shares. I do not know if it is appropriate but I will try it for size, and if it is not appropriate please stop me. Mr. MacGregor, the former superintendent of insurance, when he was testifying before the Senate banking committee on the private bill to incorporate World Mortgage Corporation, stated that there was more justification for a loan company to own a trust company than for any other type of financial institution to control any other type—that the best justification for a parent and subsidiary relationship was for a loan company to own a trust company. We do not go on to say that a trust company should be able to own a loan company and keep on pyramiding. The statute prohibits this.

Mr. GELBER: I wonder if the witness would have any suggestion to make to protect the public against pyramiding, to which they are opposed, and yet to meet their needs?

The CHAIRMAN: Before the witness answers that question, may I say it is now 11 o'clock and the witnesses have indicated to me that they are prepared to meet with us this afternoon. There are still quite a number of committee members who have given me their names as they wish to ask questions. It would seem to me that if the committee would approve, it might be appropriate for us to meet this afternoon. This is an important subject and these gentlemen have come from considerable distances to make their representations.

Mr. LLOYD: I think they made their position quite clear. It is a matter of digesting it in relation to other matters.

The CHAIRMAN: If they are content to wait until this afternoon I would see no harm in joining with them after orders of the day or at 3.30 p.m.

Mr. LAMBERT: Would it be possible to have Mr. Humphrys also since these subjects are so closely related? Perhaps we would like to ask Mr. Humphrys for his opinion on this particular point.

The CHAIRMAN: I would anticipate that would happen. However, this is a new departure. Have you in the past permitted people making representations to examine other people making representations? This would in effect be what we would be doing.

Mr. LAMBERT: No, I think the members would be asking an additional witness questions.

The CHAIRMAN: That would be fine. We will meet this afternoon at 3.30.

AFTERNOON SITTING

WEDNESDAY, November 18, 1964

The CHAIRMAN: Gentlemen, I call the meeting to order. Your pleasure at being here will be enhanced immeasurably when I advise you that I am about to inflict a short speech on the House of Commons which you will escape, and having been so designated I will be retiring. Unfortunately, our Vice Chairman is attending the mayors' convention in Vancouver, of which he is the president, and I would therefore ask Mr. Lloyd to take the Chair.

(Mr. Lloyd took the Chair.)

The ACTING CHAIRMAN (*Mr. Lloyd*): Gentlemen, at our adjournment we were proceeding with questions to the witnesses. I will now call on Mr. More. As he is not present I will call on Mr. Gray. Mr. Gray is also not present, so the next on my list is Mr. Lambert.

Mr. LAMBERT: I wonder if any of the witnesses could comment upon the choice of the figure of 10 per cent as criteria for the ownership of shares. What is the difference between 10 per cent and 20 per cent or less? Is there any particular significance in it, or have the witnesses any comments to make in this regard?

The ACTING CHAIRMAN: I will ask Mr. Lambert this question. Mr. Finlayson indicates there was a specific request for some suggested amendments which they might offer. Do you still wish to proceed with your questioning before that is dealt with?

Mr. LAMBERT: No, I will defer my question.

Mr. FINLAYSON: There were a number of questions directed to me and to Mr. LeMesurier with respect to this aspect of pyramiding, and implicit in some of the questions was a suggestion that it was undesirable. I was also asked specifically what precise amendments I would suggest which would get rid of this possibility. I have already suggested to the committee that subsection 3 on page 53 of this bill should be amended in paragraphs (a) and (b) by deleting the words in brackets "excluding therefrom shares of the capital stock of the trust company", and also deleting, at line 29 the words "excluding therefrom shares of the capital stock of the loan company".

In order to make the same amendment in effect in the Trust Companies Act which has the same provision, I would ask, for the sake of getting the record straight on my amendment, that the members of the committee look at page 43 of the Trust Companies Act contained in this pamphlet where section 33 of bill C-123 dealing with the Trust Companies Act provides for the amendment of section 70, subsection 5(a).

I would suggest respectfully that subsection 5(a) at the top of page 43 be amended by deleting the words starting at line 3 which read as follows: "excluding therefrom shares of the capital stock of the loan company", and also

to delete the words commencing at line 5 "excluding therefrom shares of the capital stock of the trust company". Those are the deletions which we desire and for which we respectfully ask. To explain how these deletions will make it possible to prevent the type of pyramiding which was described in particular by Mr. Gelber in his questions I would suggest the following: there is already a provision in the Trust Companies Act, in section 68, subsection 1(j) which reads as follows—and this is permissive as it deals with what the trust company can invest in—

(j) fully paid common stocks of a corporation incorporated in Canada which, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid; but not more than 30 per cent of the common stocks and not more than 30 per cent of the total issue of the stocks of any corporation shall be purchased by the company and the company shall not invest in its own stock or in the stock of any other trust company;"

As the law now stands one trust company could not purchase shares of another trust company. The amendment which I suggest would appear in the Loan Companies Act and would be comparable to the provisions in the Trust Companies Act. The powers of the loan company are set out in section 60, subsection 1(e). As presently worded it reads as follows—and this again is permissive in that the loan company is permitted to purchase shares—

(e) The fully paid common stocks of any such company or of any chartered bank in Canada which, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of such company or chartered bank during the year in which the dividend was paid; but not more than 30 per cent of the common stocks and not more than 30 per cent of the total issue of the stocks of any company or bank shall be purchased by the company.

It ends there in the present statute. You will notice that the wording is very similar to the wording of section 68, subsection 1(j) of the Trust Companies Act. I would simply suggest that we add to section 60, subsection 1(e) of the Loan Companies Act the following words:

and the company shall not invest in its own stock or the stock of any other loan company.

The effect of this would be that it would be impossible to have the type of pyramiding that Mr. Gelber suggested and about which he seemed to be concerned. Right now one trust company cannot invest in another trust company. If it were made clear by amendment that a loan company could invest in another loan company, it would be impossible, in my submission, to do the type of pyramiding which is regarded perhaps by some of the members as being undesirable.

There is one other amendment which has been suggested in this committee which is set out in the minutes of proceedings and evidence number 5 at page 77. This is a proposed amendment by Mr. Moreau of this committee. It suggests a new section 61(a) to the Loan Companies Act. It reads as follows:

Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by

the treasury board upon the report of the superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the Trust Companies Act applies.

It then goes on to make it clear that in making these purchases you cannot use all the funds.

If the amendment which I suggested is accepted, it will mean that it is only on such terms and conditions that the treasury board may prescribe, upon the report of the superintendent, that a loan company would be permitted to invest its funds in the fully paid shares of a trust company. You will then have the type of supervision and regulation which prevents companies from making unwise investments and having a type of investment in the capital stock portfolio which is regarded as undesirable. At the same time, once that investment is made by a loan company in a trust company with the approval of the treasury board and the superintendent, it would be impossible to carry the thing any further. No loan company can buy shares in another loan company if my suggested amendments go through. As it already stands, no trust company can buy shares in another trust company.

Mr. LAMBERT: I would repeat my question. Does Mr. Finlayson or Mr. LeMesurier see any significance in the figure of 10 per cent of the shares as indicated at the beginning of the proposed clause 40?

Mr. LEMESURIER: It would seem to me that the 10 per cent figure has been selected by the proponents of Bill No. C-123 as being a very low figure, and the proponents of the bill obviously feel that they do not want a major investment by a loan company in the shares of a trust company, and then to let the loan company borrow on that borrowing base. Whether you prohibit it or whether you say that they are not penalized by owning only nine per cent but they are penalized by owning ten per cent, the bill effectually stops the type of transaction which we feel is justified and which World Mortgage is proposing.

I see nothing magic in the figures of five, ten or fifteen per cent. The amendment which Mr. Moreau proposed and which Mr. Finlayson has just read from the proceedings purports to give a loan company the right to own all the shares of a trust company, but at the same time it makes it impractical for it to do so by not allowing it to use the shares of the trust company as part of the borrowing base. It seems to give with the left hand and take away with the right hand at the same time. I can see nothing magic in the figure of ten per cent. It is obviously a low figure which has been selected because the proponents of Bill No. C-123, or this particular section of it, seem to believe there is some risk in the shares of a well established trust company being used as part of the borrowing base of a loan company. We disagree with that proposition.

Mr. MORE: I do not know whether my question has been answered or not. Mr. Gelber has been speaking about pyramiding. If I understand this correctly, the shares of Eastern are limited at $12\frac{1}{2}$ times their value. In the new company they will be permitted four times the value, which gives you $16\frac{1}{2}$ per cent. The present limit is $12\frac{1}{2}$ per cent, and under the act the maximum will be 15 per cent. In this manner you will give them $16\frac{1}{2}$ times the borrowing value on the shares rather than the present maximum of $12\frac{1}{2}$, and the new maximum proposed at 15. Is that not the case?

Mr. LEMESURIER: I do not think that is the case as we see it. I do not think the shares of Eastern & Chartered Trust Company are being borrowed on at $12\frac{1}{2}$ times their value. The book equity of Eastern & Chartered Trust

is being borrowed on close to $12\frac{1}{2}$ times. We still feel that the shares of Eastern & Chartered Trust Company are a very safe investment. The fact it has $12\frac{1}{2}$ times its equity in the form of deposits and other short term liabilities does not make these shares risky. And, there is a real value to the shares when they are held by World Mortgage Corporation.

Bill No. C-123 appears to say that these shares of Eastern & Chartered Trust Company have no value; they have a very real value.

Mr. MORE: I was not getting into that part of it but, in effect, your equity is going to be $16\frac{1}{2}$ times rather than $12\frac{1}{2}$ times.

Mr. LEMESURIER: No sir, I would not agree with that. The book equity of Eastern & Chartered Trust Company is being borrowed upon 12 times—that is, up to $12\frac{1}{2}$ times. But, the shares themselves have a very different value from their book equity. In respect of Union Carbide Canada Limited and the recent public distribution of its shares, taking it at the \$24 per share offering price for the total 10 million shares, the market put a total value on the Union Carbide Company of \$240 million, whereas the equity on its books was only \$80 million. There is no relationship between book value and market value.

A going concern has great value in excess of its book value. But, do you mean to say the people who argue this is double heading would say in respect of Union Carbide Company that the shares have no value over the \$80 million book value? We think they have tremendous value over the \$80 million book value. I think they were confusing the book value of the trust company equity on its books with the market value of the trust company shares in the hands of the public, or in the hands of World Mortgage Corporation. They are as different as apples and oranges.

Mr. MOREAU: It seems to me we are being asked to make an exception with a special circumstance. I would like to go into the capital structure of the two companies in more detail.

I think you said this morning you have an initial capitalization in World Mortgage Corporation of \$2.7 million which, I gather, was cash or paid up stock.

Mr. FINLAYSON: This $\$2\frac{1}{2}$ million cash figure was the one I used.

Mr. MOREAU: That was \$2.7 million.

Mr. FINLAYSON: I think Mr. LeMesurier suggested it might be \$2.7 million.

Mr. MOREAU: For approximately how many shares of stock was that? Was the figure 10,000?

Mr. LEMESURIER: That is 50,000 shares, sir, at \$55 each. That was the former proposal. It might be \$50 now. If it was \$50 each that would be 2,500,000.

Mr. MOREAU: That was the subscribed stock at the time. Now, I take it that treasury stock is going to be transferred in exchange for Eastern & Chartered Trust Company stock. Am I correct in this assumption?

Mr. LEMESURIER: An exchange offer will be made by World Mortgage Corporation, by which it will offer—

Mr. MOREAU: Additional treasury shares?

Mr. LEMESURIER: Yes, of World Mortgage Corporation, to the shareholders of Eastern & Chartered Trust Company in exchange for their shares.

Mr. MOREAU: And, the figure you gave of \$25 million would be approximately another 500,000 shares, or in that order?

Mr. LEMESURIER: Yes.

Mr. MOREAU: Now, I think you indicated in your brief somewhere something to the effect you expect 90 per cent of the shareholders to accept the offer of transfer and so on.

Mr. FINLAYSON: That was where the figure of \$25 million originated, and that was assuming that number accepted.

Mr. MOREAU: What I would like to have a look at is the capitalization of Eastern & Chartered Trust Company now and how its shares are held because it seems to me that conceivably you would have to have almost total control of a company before such a change would be attractive. I am wondering if I am correct in assuming that. I assume that Eastern & Chartered Trust Company shareholders which, essentially, must be a rather compact group, are making this move in a block. I am wondering if I am right in that connection.

Mr. FINLAYSON: Well, the largest single shareholder of the Eastern & Chartered Trust Company is the Bank of Nova Scotia. But, it is a minority shareholder in that company and, as such, the offer that is made would have to be attractive enough to do more than get the Bank of Nova Scotia to accept it. It would have to bring the public in generally. If the general public did not come in the offering would not be a success. At least, we have no guarantee in advance that the offer will be substantially successful.

Mr. MOREAU: Do you know how many shares the Bank of Nova Scotia would hold—that is, what percentage of Eastern & Chartered Trust Company?

Mr. FINLAYSON: We do not have the percentage available and I do not know it, but it is less than effective control. It is not large enough by itself.

Mr. MOREAU: Would it be 10, 20, 40 or what?

Mr. FINLAYSON: No one has ever told me the figure and I am sorry I cannot help you at all in that connection.

Mr. MOREAU: Would you tell me this. Is there any other substantial shareholder, say a group of three or four? Are there any other substantial interests in Eastern & Chartered Trust Company similar to the Bank of Nova Scotia?

Mr. FINLAYSON: There is apparently one other large investor in Eastern & Chartered Trust Company who owns less than the Bank of Nova Scotia, but I do not know who the principals behind that shareholder are.

Mr. MOREAU: So, essentially, there are no larger groups than the Bank of Nova Scotia?

Mr. FINLAYSON: No. The Bank of Nova Scotia is the largest single shareholder, but its shareholdings are not sufficiently large to give it effective control.

Mr. MOREAU: What percentage would you consider necessary for effective control of the stock of Eastern & Chartered Trust Company?

Mr. FINLAYSON: I personally could not answer that question. I think it would vary with every company, would it not?

Mr. MOREAU: I was interested in that point because you said they do not have effective control, and I wondered what you thought effective control was. I realize it is a variable. It does depend on how the other shares are held.

Mr. LEMESURIER: I would not want to answer what effective control in one particular situation actually might be.

Mr. MOREAU: The amendments which you have proposed, as I understand it, were to prevent pyramiding between one trust company and another or between one loan company and another, but you still feel the principle of a trust company to a loan company would be all right.

Mr. FINLAYSON: Well, to answer that, of course, I am really putting everything the other way around, a loan company acquiring an interest in a trust company. It appears that the proponents of the bill do not see any objection in that because the effect of the amendment you proposed is that it is now possible for a loan company to purchase up to 100 per cent of the shares in a trust company subject to the restrictions in the meantime. Now, of course, it is

also true that on the other hand it is made clear by the other amendments suggested that they cannot count the securities in determining what their borrowing limits would be. But certainly it is our position that there is no objection to a loan company acquiring stock in a trust company.

Mr. MOREAU: Well, I appreciate that point but I think you will also appreciate the fact that the principle of escalation is recognized and sort of disbarred or excluded, and if they own more than 10 per cent they can only take sort of the aggregate position of the two companies in determining this.

Mr. FINLAYSON: You talk about pyramiding. To my mind, that involves putting more than one block on another. It is the fear that you are taking the same money and rolling it through a number of companies and, if my proposed amendments go through, once the loan company acquires the shares of a trust company, then it cannot go anywhere else because a loan company cannot buy shares in a loan company and a trust company cannot buy shares in a trust company.

Mr. MOREAU: You are suggesting that one stage is all right but that three or four stages should be ruled out, and I appreciate that.

Mr. FINLAYSON: With respect, you must keep in mind the one stage already is controlled if your amendment is given effect because even in the first stage the purchase by the loan company of the shares in the trust company must be subject to the approval of the treasury board and the superintendent of insurance. So, you have a type of regulation there, and ours is a completely bona fide proposition.

I appreciate the concern of the members of the committee that we are not the only people in the world and that this is a statute of general application. But, I say that the protection that the lending public gets is that each one of these acquisitions of shares by a lending company has to be approved by the superintendent of insurance and treasury board, so if any fly-by-night outfit comes along they are not going to get that approval.

Mr. MOREAU: But, you appreciate it is difficult, you might say, to grant fly-by-night outfits and so on this, and you say yours is a bona fide company. I am not contesting that, but I think you appreciate in legislating it is difficult to draw distinctions between those which are bona fide companies and those which are so called fly-by-night outfits. You have your reservations and suspicions, but it is very difficult to turn down applications on that basis.

Mr. FINLAYSON: Let us look at it another way, if I may. The fact of the matter is that there are two examples of this very thing in existence, the Canada Permanent Trust Company and the Huron & Erie. Now, we are trying to do the same thing. The effect of this proposed legislation will be to prevent us from doing this. Canada Permanent and Huron and Erie have been around a long time and are well established, but they apparently now have reached a stage where they can live under this new legislation because, we must assume, they understand it and they have not come down to protest it. The only effect this is going to have is to keep anyone else from doing the same thing as Canada Permanent and Huron & Erie have done.

Mr. MOREAU: Would you not say then it would be fair to assume that Huron & Erie and the other company involved are, no doubt, in a position where their combined assets versus liabilities would put them under the restrictions; in other words, they already are at the stage the legislation is trying to direct you into, shall we say.

Mr. FINLAYSON: We cannot get going. But, if you give us 10 years perhaps this legislation will not bother us at all. We do not know at what price the loan company purchased the trust company in the case of Canada Permanent

and at what price they are carrying that on their books. We do not know just how adversely affected they would be if they had to delete that from their capital structure. But, you could not get started with this type of a joint operation without starting off in very much the same way as we propose to do.

Mr. MOREAU: There is another point I want to bring up. Reverting to the share ownership and transfer you continually come back to industrial shares and I would like to ask you in respect of the example that has been used quite frequently during this discussion today, that of International Nickel, do you seriously think that International Nickel would put a substantial block of shares into a company which initially had 50,000 shares of paid up stock at \$55, and that it would take 500,000 shares of that.

Mr. FINLAYSON: No, but what we might do is to issue our shares for cash, and then take the cash and buy International Nickel stock. You would not have to consult International Nickel at all.

Mr. MOREAU: I quite appreciate that.

Mr. FINLAYSON: But the result would be exactly the same. And we could do the same thing with the shareholders of Eastern & Chartered Trust Company.

Mr. MOREAU: I appreciate that, but then you are bringing new money into the operation, and International Nickel's stock would not suddenly be used a second time, so to speak, as an asset.

Mr. FINLAYSON: If we were to go out and issue shares for cash, and then immediately turn around and convert that cash into International Nickel shares, then we would be in no different position from what we would be in if we were to acquire International Nickel stock directly.

Mr. MOREAU: But you are not acquiring International Nickel stock essentially from the trade or from the exchange; you are going to have to raise the money first; in other words, this involves bringing new finances into the picture; and I think in the two situations you describe you admit that it is very unlikely, or remote, because you could not get any industrial company, shall we say, to accumulate their stock from their shareholders in that way and to substitute it in the same way.

Mr. FINLAYSON: No, I think, with respect, Mr. Moreau, that I cannot have made myself clear in this instance. But let us go back to Eastern & Chartered Trust. I remember this is just another wing of the people I represent here, and unless this offer is made attractive enough to the shareholders of Eastern & Chartered Trust Company, they just are not going to buy it. They have the stock right now which they can sell on the market for \$50; so they are not going to turn it over to World Mortgage Corporation unless they think that the shares they are getting in return are worth at least \$50. That is point No. 1.

But perhaps we might do it another way. We could go to the public directly or to the shareholders and say to the shareholders of Eastern & Chartered Trust: we will sell you a share in World Mortgage Corporation for \$50 in cash. But if we did that, so far as the shareholder is concerned, he would look at it just as hard; because whether he has in his hand a share worth \$50, or \$50 in cash, he still has to be satisfied that the share he is getting is worth \$50.

Mr. MOREAU: What you are saying is that instead of putting \$50 into the treasury, you are putting his share into the treasury.

Mr. FINLAYSON: That is right.

Mr. MOREAU: Those shares in effect are being used as security for the stock he receives?

Mr. FINLAYSON: No, they are not a security; it is the purchase price for the stock he receives.

Mr. LEMESURIER: As we discussed it this morning, there is no real difference from the point of view of World Mortgage Corporation and the security of World Mortgage Corporation creditors, if World Mortgage Corporation goes out and raises \$25 million in hard cash from the public and then makes a cash offer to the shareholders of Eastern & Chartered Trust Company for their shares. When that deal is completed, Eastern & Chartered Trust Company would have most of its shares owned by World Mortgage Corporation, and there is no new cash staying in World Mortgage Corporation or in the Eastern & Chartered Trust Company, because the cash has gone out to the shareholders of the Eastern & Chartered Trust Company. A share exchange is exactly the same transaction, but it is being done in one step. They have an opportunity to acquire shares in exchange, instead of doing it in two steps, that is by raising the cash and buying the shares for cash. The result would be identical. There is no difference in substance.

The ACTING CHAIRMAN: Are you satisfied, Mr. Moreau?

Mr. MACALUSO: What are you asking this committee to do in reality is to give special consideration to your people in not allowing the bill to go through as it is now; for, as you say, if Canada Permanent and Huron & Erie have done this, you say: "Let us do it too; give us ten years and we would not bother with this bill either". Is that not your meaning?

Mr. FINLAYSON: I did not mean to imply that what Canada Permanent and Huron & Erie are doing is wrong.

Mr. MACALUSO: No, but you just want to have an opportunity to do the same thing and you are asking this committee to give you special consideration because you just happen to be in the midst of organizing this venture at a time when this bill has come before the house and before this committee. So in essence that it what it is. If you were not embarked upon this venture, you would not be interested of course.

And I would like also to get the fact made clear that Mr. LeMesurier brought out just now; namely, that you want to do away with one step in going out and raising cash and buying Eastern & Chartered Trust stock. If you can do what you want to do in the same way, why can you not do it?

Mr. LEMESURIER: That could actually be done, but it does not end at that. How could you provide assurance to the Eastern & Chartered Trust shareholders that they would have an opportunity to become shareholders of the World Mortgage Corporation? You would be asking Eastern & Chartered Trust shareholders to sell their shares for cash and to be out of the picture completely. You would not be giving them an opportunity to participate on a continuing basis in the joint venture. As you raised your cash in the first instance, you could not use the shareholders' list and say: "We will take \$55 from shareholders, but not from the public".

Mr. MACALUSO: The offer would not be as sweet that way.

Mr. LEMESURIER: No one wants to sell Eastern & Chartered Trust shares. The shareholders are satisfied with their investment. They believe it to be a safe one, and they want to be associated with the venture. Therefore there is going to be a problem in getting them to sell their shares. Instead, they are going to have to have assurance of having a continuing interest in a joint venture. So the thing to do is to have the shares exchanged.

Mr. MACALUSO: The offer is not as sweet the other way.

Mr. FINLAYSON: There is also another point. No matter how we acquire the shares of Eastern & Chartered Trust, we cannot use them as part of our capital in computing the borrowing limits. After all, the object of the exercise is that World Mortgage Corporation, of course, wants this particular trust company's shares.

Mr. MACALUSO: You could borrow on them as a base?

Mr. FINLAYSON: Yes, to borrow on the base, and also it would be a comparatively simple matter to operate a loan company out of the various branches and things of that trust company. In other words, who is going to pay us \$50 for a share of World Mortgage Corporation unless we can demonstrate right at the outset that we have the administration set up with which to start lending money.

Mr. MACALUSO: I can see your problem, but there are two questions. I do not think Mr. More's question was completely answered when he said that you are going to have $12\frac{1}{2}$ times, and with four times it means $16\frac{1}{2}$ times. The fact that you only have $12\frac{1}{2}$ times now does not prevent Eastern & Chartered Trust Company under your amendments from going up to $16\frac{1}{2}$ times, even though they are not there. There is nothing to stop them from going up to $16\frac{1}{2}$ times, as pointed out by Mr. More. Moreover, there is the other problem, as I see it. This bill, as Mr. Finlayson has said, is of general application. The fact that World Mortgage Corporation is a sound venture, or that it may be a sound venture, with sound people behind it, does not help in the case of some of these fly-by-night companies. There are trust companies which were formed very recently which have not even got on their feet yet, nevertheless they would be able to do the same thing. That is what troubles me. And although there is a special situation in your case, it does not prevent the other cases, and what I am having trouble to reconcile is that although you are safe, somebody else may not be.

Mr. FINLAYSON: My only answer is that we have the superintendent of insurance and his department, and they are the ones who would have to approve any future purchases. I can only rely upon them. This is a highly regulated type of business; it is controlled by people who have been doing it for many, many years. The public just has to rely, in fact, upon the competence of the people in the superintendent of insurance activity.

Mr. MACALUSO: I have no further questions.

The ACTING CHAIRMAN: Are there any further questions of these witnesses?

Mr. LAMBERT: This morning I raised the question with Mr. Humphrys, with regard to whether we might have his comments on the proposal for exemption of this application of the proposed legislation to the situation of the World Mortgage Corporation.

The ACTING CHAIRMAN: I take it, Mr. Lambert, that what you would like to do is perhaps to requestion Mr. Humphrys on the clause of this bill in the light of the statements made. We are to meet tomorrow morning at 10 o'clock, and the committee could, if it wished, pursue the questioning of Mr. Humphrys at that time. We did, after all, try to accommodate ourselves to the meetings with the witnesses today, and if you wish to do it that way, you might do so.

Mr. LAMBERT: We could do it in the morning.

The ACTING CHAIRMAN: That is right.

Mr. LAMBERT: I am in the hands of the committee.

Mr. MOREAU: I wonder if it would be possible to supply us with copies of the proposed changes in the bill?

Mr. FINLAYSON: I shall have them typed out and made available to you the first thing in the morning.

The ACTING CHAIRMAN: Before the witnesses leave, I think the Chairman has the right to observe that Mr. Finlayson is particularly concerned with clause 3.

Mr. FINLAYSON: That is correct.

The ACTING CHAIRMAN: That is your major concern, and the thing that bothers us.

Mr. FINLAYSON: That is correct. But of course in order to make the change which is necessary, you have to make a corresponding change in the Trust Companies Act.

The ACTING CHAIRMAN: Your main concern is with paragraph (a) of clause 3. I think it is the pleasure of the committee to release the witnesses and that the Chair entertain a motion to adjourn to meet tomorrow morning.

Let me thank you on behalf of the committee, gentlemen, for coming and giving us the benefit of your explanations.

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(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964

STANDING COMMITTEE

ON

CANADA.

BANKING AND COMMERCE,

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

(THURSDAY, NOVEMBER 19, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESSES:

(Mr. George Finlayson, Counsel for World Mortgage Corporation; M. J. J.
Ross LeMesurier, Wood, Gundy and Company Limited; Mr. R.
Humphrys, Superintendent of Insurance.)

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Gelber	Monteith
Armstrong	Grafftey	More
Asselin (<i>Notre-Dame-</i> <i>de-Grâce</i>)	Gray	Moreau
Basford	Grégoire	Mullally
Bell	Greene	Munro
Blouin	Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-</i> <i>Cowichan-The Islands</i>)	Jones (<i>Mrs.</i>)	Otto
Caouette	Kindt	Pascoe
Chrétien	Klein	Rynard
Côté (<i>Chicoutimi</i>)	Lambert	Scott
Douglas	Leblanc	Tardif
Frenette	Lloyd	Thomas
Flemming (<i>Victoria-</i> <i>Carleton</i>)	Macaluso	Vincent
	Mackasey	Wahn
	McCutcheon	Whelan
	McNulty	Woolliams—50.

Quorum—10

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 19, 1964.

(18)

The Standing Committee on Banking and Commerce met at 10.00 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Basford, Cameron (*High Park*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Gelber, Gray, Habel, Lambert, Lloyd, Macaluso, Mackasey, McCutcheon, McNulty, Moreau, Mullally, Otto, Pascoe, Pennell, Scott, Wahn. (22).

In attendance: Mr. George Finlayson, Counsel for World Mortgage Corporation; Mr. J. J. Ross LeMesurier, Wood, Gundy and Company Limited; Messrs. Charles W. Jameson and W. Scott McDonald, Bank of Nova Scotia; Mr. Richard Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman said that Mr. Finlayson had asked for the opportunity to elucidate a matter to which he had referred at yesterday's meeting. Mr. Finlayson was recalled and gave information concerning the interests of the Bank of Nova Scotia in the Eastern & Chartered Trust Company.

Mr. LeMesurier was recalled, and he and Mr. Finlayson were questioned.

Mr. Finlayson said that he had been advised that the amendments which he had requested at yesterday's meeting would not accomplish the purpose which he had intended; he therefore withdrew them and requested that the Committee consider amending Clause 40 by adding a new sub-clause (4), copies of which he distributed to the members.

The questioning having been concluded, the witnesses were discharged.

Mr. Humphrys was recalled, and questioned.

The Committee resumed clause by clause consideration of the Bill.

Clauses 26, 27 and 28, as amended by renumbering, were carried.

On clause 29

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clause 29 be amended

(a) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following:

“be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day

or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day, but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 36C does not apply.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

(b) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and

(c) by striking out line 28 on page 38 and by substituting therefor the following:

Conclusions reached by directors.

“section (7) of this section.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

Clause 29, as amended, was allowed to stand.

Clauses 30 to 33 inclusive, as amended by renumbering, were allowed to stand.

Clauses 34, 35 and 36, as amended by renumbering, were carried.

On Clause 37

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Resolved,—That clause 37 be amended

(a) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

“the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares

held by or for the non-resident and associates on any subsequent day, but this sub-section shall not be construed to prohibit the exercise of voting rights in circumstances where section 51C does not apply.

Change of status of corporate resident.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

- (b) by renumbering subsection (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and
- (c) by striking out line 27 on page 50 and by substituting therefor the following:

Conclusions reached by directors.

“section (7) of this section.

(9) In determining for the purposes of sections 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declaration submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

Clause 37, as amended, was allowed to stand.

Clauses 38 and 39, as amended by renumbering, were permitted to stand.

On Clause 40

For purposes of getting on record the amendment requested by Mr. Finlayson on behalf of World Mortgage Corporation, it was moved by Mr. MacKasey and seconded by Mr. Scott, that clause 40 be amended by the addition of a new sub-clause 4, reading as follows:

“(4) Notwithstanding anything contained in subsection 3 of this Section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada and have been acquired for valuable consideration the provisions of subsection (3) of this Section shall not apply.”

The clause and the proposed amendment were permitted to stand.

It was moved by Mr. Moreau and seconded by Mr. Macaluso, that the following new clause 41 be inserted immediately after line 24 on page 52:

"41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

Investment in trust company

"61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies.

Limitation

(2) No investment shall be made by a loan company under subsection (1), if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve."

The proposed amendment was allowed to stand.

The present clause 41 of the Bill was carried.

At 12 o'clock noon the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, November 19, 1964.

The CHAIRMAN: Gentlemen, we have a quorum. Would you please come to order.

Mr. Finlayson has requested that he be permitted to give a further elucidating statement on some of the evidence he gave to this committee yesterday, in order to clear up a matter and, if there is no objection, I would ask Mr. Finlayson to make this statement.

Mr. GEORGE FINLAYSON (*Counsel for the World Mortgage Corporation*): Thank you, Mr. Chairman. I was asked a number of questions yesterday by Mr. Moreau in respect of the interests of the Bank of Nova Scotia in Eastern & Chartered Trust Company, and the answers I gave at that time were accurate on the information that I had. They are still accurate; however, I did not have in my possession this recent additional information which, if I had had it, I would have disclosed at the same time to the committee, because I think that my evidence taken as a whole might be a little misleading to the committee. Now, in respect of this additional information, I just did not know anything about it yesterday, but it was drawn to my attention by my clients as soon as the hearing closed.

The questions were related to the interests of the Bank of Nova Scotia in Eastern & Chartered Trust Company. I said then that the Bank of Nova Scotia owned less than 50 per cent of the shares of Eastern & Chartered Trust Company. But, I think that the committee should know that the sponsors of World Mortgage Corporation together own more than 50 per cent of the shares of Eastern & Chartered Trust Company. I listed the sponsors yesterday. They are the Bank of Nova Scotia, Wood Gundy & Company Limited, Burns Bros. & Denton Ltd., Harris & Partners Ltd., and Greenshields & Co. Ltd.

Mr. Chairman, that is all I wanted to add to what I said yesterday.

The CHAIRMAN: Are there any questions arising out of the further information given by Mr. Finlayson?

Mr. LLOYD: Mr. Finlayson, I would have liked to ask you some questions yesterday but I was Acting Chairman, of course, and I was unable to pursue the matter from the chair.

I want to go back a bit to reconstruct the case of your corporation, which you were using as an illustration of the application of these proposed amendments, and, if we may, we will use the particular case you have brought to the attention of the members of this committee, namely the case of your clients. How much approximately had Eastern & Chartered Trust Company in capital and surplus, say, at December 31 last year?

Mr. FINLAYSON: If I may, I would like Mr. LeMesurier to come to the head table, if he may, because he can answer those questions.

Mr. JAMES ROSS LEMESURIER (*Wood Gundy & Company Limited*): Would you please repeat the question?

Mr. LLOYD: At the last balance sheet date approximately in round figures what was the amount of the capital and surplus of Eastern & Chartered Trust Company?

Mr. LEMESURIER: It was \$14 million to \$15 million.

Mr. LLOYD: And, what would be the amount of the loan liabilities of Eastern & Chartered Trust Company?

Mr. LEMESURIER: It would be \$196 million.

Mr. LLOYD: So, the ratio in this case would be something in the order of 12 times, would it not?

Mr. LEMESURIER: I would have to work it out. It is close to the borrowing limit.

Mr. LLOYD: You say it is close to the limit, so \$15 million of capital and surplus of Eastern & Chartered Trust Company is now used to the existing limit of the statute?

Mr. LEMESURIER: That is correct.

Mr. LLOYD: Now, you propose to incorporate a company known as the World Mortgage Corporation and to exchange the shares of World Mortgage Corporation for the shares of Eastern & Chartered Trust Company. That was your statement.

Mr. LEMESURIER: We propose that World Mortgage Corporation would make a share exchange offer, but to the extent that it would be accepted we are unable to tell you at the present time.

Mr. LLOYD: You mentioned a figure in the neighbourhood of \$50, and that this would be the current market value; presumably, the values to be attached to the shares of Eastern & Chartered Trust Company for the purpose of this increase would be approximately \$50.

Mr. LEMESURIER: Yes. The shares of Eastern & Chartered Trust Company would be reflected on the asset side of the balance sheet of World Mortgage Corporation at about \$50 a share. When and if the share exchange offer was successful it probably would show about 25 million worth of investment.

Mr. LLOYD: So you would then have invested in Eastern & Chartered Trust Company, and appearing on the books of World Mortgage Corporation, \$25 million?

Mr. LEMESURIER: That is correct.

Mr. LLOYD: And, on the opposite side you would have \$25 million of capital stock value.

Mr. LEMESURIER: In respect of these shares, yes, and also shares in respect of an additional \$2½ million or \$2¾ million cash.

Mr. LLOYD: Then, under the provisions of the law, if the amendments proposed were passed, World Mortgage Corporation would be in the position to seek, subject to the approval of the superintendent of insurance and treasury board, to expand their deposit liabilities—at least, legally—at 12½ times the \$25 million?

Mr. LEMESURIER: That is correct.

Mr. LLOYD: And, in fact, this is an expansion of \$10 million multiplied by 12½ or 15, whatever the law may be. This is the possibility, is it not?

Mr. LEMESURIER: Would you please repeat that question?

Mr. LLOYD: Well, in World Mortgage Corporation you are going to have a value, which is the market value today, of Eastern & Chartered Trust Company shares, in the amount of \$25 million?

Mr. LEMESURIER: Correct.

Mr. LLOYD: That is, according to your illustration.

Mr. LEMESURIER: Yes.

Mr. LLOYD: Now, that \$25 million is a value which creates a base for expansion of credit in the hands, of World Mortgage Corporation?

Mr. LEMESURIER: It gives them the power to raise money through—

Mr. LLOYD: But, if I may interrupt you, if this proposed amendment passes, you are precluded from expanding.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And this is your objection?

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, in fact, what you are doing by this device of the corporation, an exchange of shareholders, is escalating this \$25 million as a base. In other words, you are escalating your power to borrow money by $12\frac{1}{2}$ times or 15 times, as the case may be, of the \$25 million in input of additional capital.

Mr. LEMESURIER: I would not express it that way. Our view is—

Mr. LLOYD: Perhaps you would not express it that way. But, will you answer my question. Is that not a fact?

Mr. LEMESURIER: No, I do not believe it is the way you suggest it, sir.

Mr. LLOYD: Then I will try it again.

Mr. LAMBERT: Would you please let the witness finish your question before interrupting.

Mr. OTTO: You are getting close to cross-examination.

The CHAIRMAN: Just let the witness answer and then you can follow with another question, if you wish.

Would you proceed, Mr. LeMesurier.

Mr. LEMESURIER: We feel that the market value of Eastern & Chartered Trust Company shares—and this is a going concern—with a long history of successful operation—is a very different thing from what its book value happens to be. The book value of the equity, \$14 million or \$15 million, does not reflect in any way the very real asset which the company has in the \$470 million which it has in its E.T.A. business. These assets are shown on the balance sheet underneath the totals but they are not reflected in the equity portion. Those assets have very real earning power in the trust company. In fact, the E.T.A. assets are \$470 million of the company's total assets, whereas its own assets are only \$210 million. The outside assets are over twice the assets of the company itself. We feel there is a very real difference between the book value and the market value. As I mentioned yesterday in respect of the Union Carbide transaction, the market value of Union Carbide is \$240 million and the book value is \$80 million. We feel that this type of difference is not being given effect to, and that if the market value is excluded from the borrowing base we are saying it has no value.

Mr. LLOYD: But surely the E.T.A. assets are all trust assets.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And are not all these assets equally measured by a liability on the opposite side of the balance sheet?

Mr. LEMESURIER: I am not claiming the trust company owns those assets, but as you look at the real worth of this company you do not find any reflection on to books of the earning power which is added. Any times you have that it is a very valuable "asset". But, none of that earning power is reflected in the \$15 million figure on the equity portion of the balance sheet of Eastern & Chartered Trust Company. This is one of the reasons, and it is only one, why there is a real difference between book value and real value.

Mr. LLOYD: When you stated the liabilities of Eastern & Chartered Trust Company were \$195 million and the capital was \$15 million you were referring to that part of the balance sheet which deals with non-trust assets.

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, that is right, and that is all we need to concern ourselves with for the purpose of examining your proposition to the committee.

Mr. LEMESURIER: No. I think, with respect, that the proponents of the amendments included in Bill No. C-23 feel that there should be no additional borrowing base allowed to reflect the ownership by World Mortgage Corporation of those shares which it will own of Eastern & Chartered Trust Company, and we feel this is a completely unrealistic point of view.

Do you?

The CHAIRMAN: If I may interrupt, Mr. Lloyd, I would ask you to allow the witness to complete what he has to say before you proceed with your next question. With all due respect to you, we are not in a court room at the present time.

Mr. LLOYD: I am not a lawyer but I know when a witness is departing completely from the original question.

The CHAIRMAN: I realize that we are all apt to get carried away in respect of certain discussions but I think we should conduct the questioning in an orderly manner and allow the witness sufficient time to complete his answer.

Mr. LLOYD: I will abide by your decision, Mr. Chairman. Would you finish what you have to say, Mr. LeMesurier.

Mr. LEMESURIER: I am finished.

Mr. LLOYD: Then, we have the situation where Eastern & Chartered Trust Company's assets are invested in mortgage instruments on the one side and on the other side are represented by debentures issued to the public, and the capital and reserves of the company.

Mr. LEMESURIER: That is correct.

Mr. LLOYD: Now, you told the committee that the capital and surplus of Eastern & Chartered Trust Company amounted to \$15 million approximately.

Mr. LEMESURIER: The book value, yes.

Mr. LLOYD: Yes, the book value.

Mr. LEMESURIER: Yes.

Mr. LLOYD: And then you indicated that the market values of these shares, if the company was liquidated, would be approximately \$25 million.

Mr. LEMESURIER: I did not say if the company was liquidated. If the present shareholders of Eastern & Chartered Trust Company liquidated their investments and sold them to other people, it would come to \$50. I did not say if the company itself was liquidated.

Mr. LLOYD: But you admit that approximately \$25 million would be the amount that would appear on the asset side of the World Mortgage Corporation upon incorporation if these transactions were completed.

Mr. LEMESURIER: Yes.

Mr. LLOYD: So World Mortgage Corporation now has a capital structure of \$25 million plus the cash. You have written up value and instead of the shareholders of Eastern & Chartered Trust Company owning shares of Eastern & Chartered Trust Company they now own shares in World Mortgage Corporation if the transaction is completed.

Mr. LEMESURIER: That is correct. But, you used an expression to the effect that we have written up the values. We have not written up the values.

The values are there and the public recognizes that the shares of Eastern & Chartered Trust Company are worth \$50. World Mortgage Corporation has not written up the assets.

Mr. LLOYD: Then we will use another term. You have placed a value on Eastern & Chartered Trust Company shares at \$25 million.

Mr. LEMESURIER: If this is the stated value of the shares of World Mortgage Corporation, the value at which they are issued, then it is the value which the market has placed on them. We have not.

Mr. LLOYD: So, you are going to use this market value as the bases of an exchange of shares between Eastern & Chartered Trust Company shareholders and the shares of World Mortgage Corporation, are you not?

Mr. LEMESURIER: Yes.

Mr. LLOYD: So, when you finish the transaction you will have in World Mortgage Corporation \$27 million worth of liabilities to shareholders represented by cash of \$2,700,000, if that is the theoretical figure we are using, and an investment in Eastern & Chartered Trust Company of \$25 million.

Mr. LEMESURIER: Yes.

Mr. LLOYD: Now, under the law, if the amendment was not passed, you then would apply to the superintendent of insurance for the authority to expand your deposit liabilities or issue debentures to $12\frac{1}{2}$ times the \$2,700,000, would you not?

Mr. LEMESURIER: As of right, the corporation could borrow 4 times, and at some future date it might well apply for a higher ratio.

Mr. LLOYD: So the capital and surplus of Eastern & Chartered Trust Company still remain. Is that right?

Mr. LEMESURIER: Yes.

Mr. LLOYD: Because there is no change in the corporate existence of Eastern & Chartered Trust Company.

Mr. LEMESURIER: That is correct; it does not affect it in any way.

Mr. LLOYD: So, their $12\frac{1}{2}$ times invested capital and reserves still remain?

Mr. LEMESURIER: That is correct.

Mr. LLOYD: Now, in addition to this device of the corporation you are now going to be in the position, if we acceded to your request, to expand that same base through the device of the corporation $12\frac{1}{2}$ times of the \$27,700,000. Is that not so?

Mr. LEMESURIER: No, we are not expanding the same base, and I would not use the expression "through the device of the corporation". I think it is a very justified business transaction. If I am going too far off the track would you please bring me back on the rails. We feel that all our concern here must be that the creditors of World Mortgage Corporation must not be prejudiced in any way by the fact that part of the investments of World Mortgage Corporation is in the form of shares in Eastern & Chartered Trust Company, and even though Eastern & Chartered Trust Company has a debt of up to 12 times its own book value. It is a regulated industry. These shares are a particularly safe investment. These shares, which would be on the books of World Mortgage Corporation are no more risky than those of any other corporation.

Mr. LLOYD: You are getting away a bit again, and I want to bring you back. What you are saying, in effect, at the present time, is that under the law $12\frac{1}{2}$ times of the existing capital and surplus is the maximum credit expansion allowable under this statute?

Mr. LEMESURIER: It is the maximum they are allowed to borrow.

The CHAIRMAN: Order, gentlemen.

Mr. LLOYD: Is it $12\frac{1}{2}$ times?

Mr. LEMESURIER: Yes.

Mr. LLOYD: Without any additional output of capital at all except by the creation of this corporation where you are exchanging the shares and setting up the structure of the World Mortgage Corporation, and am I correct in saying that the shareholders are identical?

Mr. LEMESURIER: If the offer is fully accepted the shareholders will be the same.

Mr. LLOYD: And, there is no change in the capital assets of Eastern & Chartered Trust Company?

Mr. LEMESURIER: Correct.

Mr. LLOYD: It becomes a wholly owned subsidiary?

Mr. LEMESURIER: Yes.

Mr. LLOYD: And, with the exception of the \$2,700,000 there is no additional input of capital?

Mr. LEMESURIER: That is right.

Mr. LLOYD: So, in fact, what you are doing is this. You want the multiplier for expansion of credit to be based on the market value of Eastern & Chartered Trust Company shares instead of the capital and surplus as shown by the balance sheet. That is what you want?

Mr. LEMESURIER: Yes. We are saying the market value which, we believe, is the real value of these shares, should form part of the borrowing base of World Mortgage Corporation.

Mr. LLOYD: And if you are allowed to do this why should not another company, in order to increase its capital and surplus, be allowed, without going through the device of corporation, to expand its capital on the base of the market value of its capital and surplus instead of the book value?

Mr. LEMESURIER: You mean why should not a trust company—

Mr. LLOYD: An existing trust company.

Mr. LEMESURIER: Yes. Why should not an existing trust company, rather than increasing its own capital on its own books by infusion of new cash and capital be able to borrow in respect of its own market value.

Mr. LLOYD: Yes. This is what you are asking. Is this not your proposition to the committee?

Mr. LEMESURIER: No, I do not believe it is. But, if you look at a company's own borrowing power it has to relate to its own balance sheet. So, if you are looking at the borrowing power of Eastern & Chartered Trust Company you must look to the values on Eastern & Chartered Trust Company's books of its equity, but when you are looking at the World Mortgage Corporation's borrowing power you are looking to its net assets, and we believe the trust company shares are very safe investment and should be included at their approximate market value in the borrowing base of World Mortgage Corporation.

Mr. LLOYD: I suggest to you that as an investment dealer surely to goodness you admit that the effect of these transactions merely is to increase the capital and surplus to reflect a market value of Eastern & Chartered Trust Company shares; and then multiply that for purposes of expansion for credit. Surely that is basic.

Mr. LEMESURIER: Yes.

Mr. LLOYD: That is what I have been trying to establish.

Mr. LEMESURIER: The position we are taking is that the market value of Eastern & Chartered Trust Company shares of the asset side of the balance sheet of World Mortgage Corporation is a perfectly good asset for borrowing and we believe it should be included. I agree with you in that connection.

Mr. MACKASEY: I have a supplementary question.

The CHAIRMAN: We will let Mr. Lloyd complete his questioning.

Mr. LLOYD: I think Mr. LeMesurier has established clearly for the committee—and correct me if I am wrong—that through the device of the World Mortgage Corporation the corporation will be able to expand really the net assets of Eastern & Chartered Trust Company to many times more than it could without the creation of this corporation, and there is no change in shareholders, no input of new assets except the \$2½ million. Now—

The CHAIRMAN: Let the witness answer the question so that we will have no misunderstanding. Did you understand that?

Mr. LEMESURIER: No, I did not fully understand it.

The CHAIRMAN: Now, we do not have to engender any heat in this. This is a very friendly atmosphere.

Mr. LLOYD: Well, certainly.

The CHAIRMAN: May I ask you to put the question as quickly as you can and then obtain the answer. In this way everyone will know where they stand on the problem.

Mr. LLOYD: I will put it again.

The CHAIRMAN: Yes, and put it slowly and in a conversational tone so that we will know where we stand.

Mr. LLOYD: I think the questions have been put very clearly, Mr. Chairman. I think Mr. LeMesurier will not admit something he already has, in fact, admitted to—

The CHAIRMAN: Put the question to him.

Mr. LLOYD: —through the answers he has given to a series of questions. The sum total of this is this—

The CHAIRMAN: Just a moment, please. Order gentlemen.

Mr. LLOYD: I wish I had a blackboard for those members who are amused by this in order to enlighten them. By the device of a corporation, in fact, you are increasing the capability of the shareholders of Eastern & Chartered Trust Company to expand the volume of their borrowings. Is this so?

Mr. LEMESURIER: To expand the volume of their borrowings?

Mr. LLOYD: Yes, that is right. Instead of owning a piece of paper in Eastern & Chartered Trust Company they now own a share certificate in World Mortgage Corporation, which owns and controls Eastern & Chartered Trust Company.

Mr. LEMESURIER: The borrowing power of the companies which, in future, will be controlled by the present shareholders of Eastern & Chartered Trust Company, namely the World Mortgage Corporation directly, and the Eastern & Chartered Trust Company indirectly, will have a bigger borrowing base than the present Eastern & Chartered Trust Company—yes.

Mr. LLOYD: Now, I want to distinguish between what you propose and what has been the present practice. The present practice has been to permit a trust company to expand its liabilities by 12½ times its capital and surplus. Is that not the present law?

Mr. LEMESURIER: Yes.

Mr. LLOYD: And this 12½ times the capital goes to the company, plus the retained earnings. Is that not so?

Mr. LEMESURIER: Basically, yes.

Mr. LLOYD: What you are saying is that it is not right that a trust company should be able to expand its credit, in effect, through the devise of a corporation, but should be able to expand its credit at $12\frac{1}{2}$ times or 15 times, as the case may be, of the equivalent of the market value of the shares. Is that not correct?

Mr. LEMESURIER: This is what the net effect would be, yes.

Mr. LLOYD: Thank you.

The CHAIRMAN: Would you proceed, Mr. Mackasey.

Mr. MACKASEY: I have one short question. The only thing I enjoy more than two lawyers arguing is two chartered accountants arguing.

Mr. LEMESURIER: I am not a chartered accountant.

Mr. MACKASEY: You obviously place quite a store on the market value of your shares, which you have mentioned to be approximately \$50 and, of course, you mentioned that the public has a good investment and they are willing to pay \$50 as the market value for trust company shares.

Mr. LEMESURIER: Yes.

Mr. MACKASEY: Therefore on the basis of that you are quite willing in the new balance sheet to present these shares at \$50 based on the confidence of the buying public which, after all, is the main factor in the shares being \$50; they consider it a good investment. Once you have established your balance sheet with the value of these shares at \$50, what will happen if you borrow to the limit of your power if, for some reason beyond your control, the stock market suddenly becomes deflated and the market value drops to \$30?

Mr. LEMESURIER: If you look down the road and see that you have a large amount of debentures outstanding, what we are concerned about is not to prejudice the debenture holders if you start to approach the top limit of your debt. If \$27 million is the base, and the government is proposing to increase the amount which can be invested in common stocks from 15 per cent up to 25 per cent this could be part of the common stock portfolio.

Mr. MACKASEY: You are naturally using the market value to your own advantage at the moment, which is the natural thing to do.

Mr. LEMESURIER: When you say "to your own advantage", I believe it is proper to reflect it in the borrowing base.

Mr. MACKASEY: You are saying the public has ignored the book value; they have established a market value. You have created a climate for the public to go out and invest. You are then taking the value of \$50 per share which the public has established and want to use this in the transfer as a figure. What would be the situation in the event of the possibility that suddenly the market value no longer is \$50 and was \$30?

Mr. LEMESURIER: This would be true in respect of any common stock investment in which the World Mortgage Corporation may invest.

Mr. MACKASEY: But you do not use the market value as the base for your loaning power?

Mr. LEMESURIER: If World Mortgage Corporation was to buy \$20 million of stock in a corporation such as Union Carbide, they would put it on the World Mortgage Corporation's books at \$20 million even though it has a book value of \$8 million.

Mr. MACKASEY: If the market value of the Union Carbide shares dropped from, say \$25 to \$15, would you alter your books accordingly?

Mr. LEMESURIER: I believe the trust company practice is to reduce the amount of the investment.

Mr. MACKASEY: You say you believe. Are you sure?

Mr. LEMESURIER: I am not positive. The insurance companies and trust companies have different methods of reflecting common share values in their books. I believe there is something in the amendment on that.

Mr. LAMBERT: There is an amendment which allows three years, I believe.

Mr. LEMESURIER: I am not sure if it is the same for the trust companies.

Mr. GELBER: Mr. LeMesurier, I presume you realize that the reason for the questioning is not any reflection on the ability of the Eastern & Chartered Trust Company or the Bank of Nova Scotia to conduct its business. We have established certain rules and you are suggesting there be an exemption. That is what we are discussing. There is no reflection on the ability of these companies to conduct their business.

Mr. LEMESURIER: In any of the comments I have made, I would not want them to be taken as an indication that I believe this is a good thing for all companies in all situations. However, we believe the general law should not be made in such a way that it would close the door to this type of sponsorship.

Mr. GELBER: You are saying that if others should come along, we should not grant the same privilege?

Mr. LEMESURIER: We realize this is an administrative problem.

Mr. GELBER: We are working on a legislative problem, and this matter has arisen.

Mr. FINLAYSON: That is quite so. Yesterday we were trying to suggest some amendments to the proposed amendments which would give more protection to the public generally. I did suggest some yesterday. We now have another suggestion which I think would limit the type of situation in which somebody could come along and do what we propose to do now. This would consist of a new subsection (4) to be added to the present proposal which is contained in section 40 of the bill at page 53. Section 68 is being amended, subsection (3) is being added, and I propose a new subsection (4). I will read it. If this new subsection (4) is added, it will not be necessary to make any changes at all in section 68 subsection (3) as proposed. It reads as follows:

Notwithstanding anything contained in subsection (3) of this section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada, and have been acquired for valuable consideration, the provisions of subsection (3) of this section shall not apply.

You would have to have a corresponding amendment to section 70 of the Trust Companies Act.

Yesterday I also suggested an amendment to the Loan Act which prohibited one loan company buying its own shares or the shares of any other loan company. Mr. Humphrys kindly drew to my attention that section 63B of the present Loan Act already contains such a prohibition. Therefore, the amendment I suggested is not necessary. The effect is that where you now have prohibitions in the Trust Companies Act against the trust company owning shares in another trust company, you now have prohibition in the Loan Act against a loan company owning shares in another loan company. You now have the provisions of section 68, subsection (3) as proposed, and if you added a provision that is suggested as a new subsection (4), there are very few situations which could arise whereby anybody could take advantage of the new power proposed, since the loan companies can now acquire shares in a trust company. It is a little difficult for us to see how there could be any serious abuse arise, especially when right now, if the amendments which are before the committee go through, a loan company can only acquire shares in a trust company subject to the conditions imposed by the superintendent of insurance.

Mr. GELBER: Of course, it is realized that if I own shares in Eastern & Chartered Trust Company as an individual, and if I have a credit standing with a bank, I could take those shares, as a corporation, and place them as security and probably borrow against the security of the shares of Eastern & Chartered Trust Company. Is that correct?

Mr. FINLAYSON: Yes.

Mr. GELBER: You say that the World Mortgage Corporation should have the same right as I as an individual?

Mr. FINLAYSON: Not to borrow.

Mr. GELBER: You are suggesting they use it as a base for borrowing. Is that not the whole argument?

Mr. FINLAYSON: Use it as a base for borrowing if it is a part of the capital structure of the company just the same as any other stock.

Mr. GELBER: Yes. The World Mortgage Corporation should have that as a base for borrowing the same as I would have if I own shares of Eastern & Chartered Trust Company.

Mr. FINLAYSON: I will go along with that.

Mr. GELBER: There is a problem involved here which is not being met by your amendment. The reason this restriction is in the bill is that the control is under the same group; that is the problem we are facing. This reminds me of this saying: Great fleas have little fleas upon their backs to bite them, and little fleas have lesser fleas, and so ad infinitum. My understanding is that if there were no exchange of shares each one of these companies would have some borrowing ability. What about the World Mortgage Corporation; if there were no exchange shares, would World Mortgage Corporation have an ability to borrow?

Mr. FINLAYSON: What they would do is they would have the \$2½ million subscribed, and then instead of issuing common stock for Eastern & Chartered Trust Company stock, they would issue it for cash.

Mr. GELBER: So, they would have to issue for cash to the public or to Eastern & Chartered Trust Company?

Mr. FINLAYSON: There is no suggestion that Eastern & Chartered Trust Company is to own any shares at all in the World Mortgage Corporation.

Mr. GELBER: The amount that is available to World Mortgage Corporation would be \$2½ million, and the balance of this capital is going to come through this exchange of shares.

Mr. FINLAYSON: No. If we cannot do it in the way we hope to do it, then we would either have to abandon the project or do it in some other way, because I do not think you could start a loan company with a base of \$2½ million.

Mr. GELBER: But based on the restriction in this bill, if it becomes law—we know what the borrowing capability of Eastern & Chartered Trust Company is—the borrowing capability of World Mortgage Corporation would be limited to \$2½ million based on that subscription.

Mr. FINLAYSON: No. Actually the whole thing would go right down the drain because World Mortgage Corporation is not going to command \$50 a share for its shares unless it has this association with Eastern & Chartered Trust Company.

Mr. GELBER: We are not concerned with that.

Mr. FINLAYSON: We are.

Mr. GELBER: I know you are; but I am not making my question clear. Whether you proceed or not, the capability of World Mortgage Corporation without this transaction will be based on a \$2½ million capital subscription. Is that correct?

Mr. FINLAYSON: That is correct, but there is not going to be any World Mortgage Corporation.

Mr. GELBER: You are suggesting each one of them will have a borrowing capability based on their capital subscription, plus surplus, and you are suggesting that that total capability be increased by this exchange of shares. Is that right?

Mr. FINLAYSON: That is the end result, yes.

Mr. GELBER: That is correct.

Mr. FINLAYSON: That is the end result.

Mr. GELBER: That is the problem with which we are dealing.

Mr. FINLAYSON: Yes.

Mr. GELBER: You want to increase the loaning capability of the complex of the two companies by an exchange of shares. Is that correct?

Mr. FINLAYSON: Well, that is the end result again.

Mr. GELBER: Let me ask you this: If I were a customer of the Bank of Nova Scotia and I was borrowed to the limit, do you think that if I, as a corporation, put the shares of that corporation into a holding company, the Bank of Nova Scotia on top of that would lend money to the holding company?

Mr. FINLAYSON: It depends on what value the Bank of Nova Scotia put on the shares of the holding company.

Mr. GELBER: I would suggest that the Bank of Nova Scotia would tell me I was borrowed to the limit in the basic company.

Mr. LLOYD: Not necessarily.

The CHAIRMAN: Mr. Scott is next.

Mr. SCOTT: I have a couple of questions arising out of Mr. Gelber's questions. He said that if he owned shares in the trust company he could take them to the bank and borrow money against them, and what you want to do is to use those same shares to borrow 15 times their value?

Mr. FINLAYSON: Four times.

Mr. SCOTT: What disturbs me is that if you took them to the bank the bank certainly would not lend you four times their value, and yet this is what you want us to give you permission to do.

Mr. LEMESURIER: That is because you do not have good value. The bank will not give you four times the value and let you do what you want with the money. Here the money you raise goes into the corporation and there is additional security for the loan. In the example Mr. Gelber used, naturally he would not borrow four times the amount and be able to use that in his personal affairs outside a corporation, but so long as it stays within the corporation which is borrowing, I believe it could be done.

Mr. SCOTT: Have you ever heard of a bank lending 16 times the value of the shares of a company?

Mr. LEMESURIER: Whether it is a bank or other creditors, if you have a corporation and it has a basic equity and value to it, in some types of corporations, particularly loan and trust companies, people are satisfied to lend money at four times its capital. That is what a loan company is all about. You form a loan company to borrow against your capital.

Mr. SCOTT: It still seems to me that you are building up the same assets twice.

Mr. FINLAYSON: If you took some security down to the bank and borrowed \$1,000 on the basis of that security and then turned around and bought a mortgage with the \$1,000 which you had borrowed and pledged the mortgage, you would have a situation which is more comparable to what we are doing, because when we borrow four times our capital we invest the money we borrow in things like mortgages, and the mortgages themselves are security to the debenture holders. The debenture holder always is secured up to the full amount.

Mr. OTTO: Mr. LeMesurier, what Mr. Lloyd has said will be the end result. However, let us suppose that World Mortgage Corporation issued \$25 million of common shares to the public; they then would have \$25 million in their treasury.

Mr. LEMESURIER: Right.

Mr. OTTO: What would be the final borrowing base on the basis of the \$25 million?

Mr. LEMESURIER: Initially $4\frac{1}{2}$, but with discretion $12\frac{1}{2}$ or perhaps 15.

Mr. OTTO: They could then take it up to \$312 million. Is that correct?

Mr. LEMESURIER: That is right.

Mr. OTTO: Suppose the World Mortgage Corporation with that cash bought shares in Union Carbide; suppose they invested \$25 million in shares of Union Carbide, would they still have the \$312 million?

Mr. LEMESURIER: That is correct, but they could not do it quite that quickly, because they are limited under the proposed amendment in that the value of their common stock investments at any one time cannot be more than 25 per cent of their total assets.

Mr. OTTO: They are reduced down to a borrowing base of 15 times $12\frac{1}{2}$.

Mr. LEMESURIER: That is correct. They also could buy the shares of an unregulated finance company which probably would be a much more risky investment than the shares of Eastern & Chartered Trust Company, and in a sense the equity in that finance company has been used as a borrowing base. The market probably has placed a value on the shares in excess of the book value of the finance company, be it I.A.C., Traders or others. The market price they pay is there and they can borrow up to $12\frac{1}{2}$ times it.

Mr. OTTO: Therefore, because of this section they cannot use the market value of Eastern & Chartered Trust Company, whereas they could with another company. You are not denying that what Mr. Lloyd said will be the result, but still in your view, it is unfair to World Mortgage Corporation.

Mr. LEMESURIER: I think, from the way we see it the effect is that if this bill goes through the legislature we discriminate against trust company investments by loan companies, but permit investments in any other corporation which might be a much more risky investment.

Mr. OTTO: Twenty five million dollars in cash in the World Mortgage Corporation when invested in any other corporation is of value, and the minute you invest it in a trust company it reduces the value.

Mr. LEMESURIER: Yes.

Mr. OTTO: There are still many ways, in other words, that you probably could make the same investment in a trust company by a sort of circumventing route by a transfer of shares, or even by proxies; for instance, there is nothing to prevent the World Mortgage Corporation from selling its shares, or taking shares of Union Carbide and Union Carbide in turn taking

shares of Eastern & Chartered Trust Company in equivalent value, and World Mortgage Corporation getting proxy votes from Union Carbide. A deal could be arranged which is not illegal but which would give the same result you are asking for.

Mr. LEMESURIER: It would not be the same result because the \$25 million investment in Union Carbide is only 10 per cent of Union Carbide, so in effect you would have only a 10 per cent flow through to the trust company.

Mr. OTTO: You are asking that \$25 million invested in a trust company be made of a value equivalent to that which it would be invested in another company.

Mr. LEMESURIER: Yes. We think the trust companies, being in a regulated industry, despite the fact that they have a higher debt ratio than industrial companies, are a safe investment and do not prejudice the position of future creditors of World Mortgage Corporation.

Mr. MOREAU: Mr. Finlayson, what would you estimate that World Mortgage Corporation shares would sell for on the open market? From the suggestion you made, I gather that without the Eastern & Chartered Trust Company they would not be worth anything near \$50.

Mr. FINLAYSON: Well, that is quite so but I could not give any kind of figure in respect of what they would be worth without the Eastern & Chartered Trust Company because that is what gives it the administrative framework to go ahead and lend money.

Mr. LEMESURIER: I would not say if you formed a trust company or loan company with good sponsorship and you decided to raise \$25 million because you believed you could invest \$25 million in a good profitable venture that the shares would not sell for \$50. It depends what the financial plan is and what the enterprise is going to be, as well as the sponsorship that the company has. It would not raise \$25 million unless it had a proper plan of operations which would prove profitable. I would not say you could not sell shares at \$50, as discussed before if you were not going to buy Eastern & Chartered Trust Company shares.

Mr. MOREAU: Perhaps I misunderstood you. I understood you or Mr. Finlayson to say that without Eastern & Chartered Trust Company, World Mortgage Corporation shares would not be worth \$50, and you needed the going concern of Eastern & Chartered Trust Company.

Mr. FINLAYSON: That is what I said, and perhaps Mr. LeMesurier does not agree with me.

Mr. LEMESURIER: No. I think the point is this. If the share exchange with Eastern & Chartered Trust Company shareholders is not feasible due to changes to be effected by passage of Bill C-123 in its present form the sponsors may see fit not to proceed with the development of the mortgage company, but if they did proceed with some alternative plan then if the shares are sold for \$50 cash these shares should be worth \$50. But, they might decide not to proceed.

Mr. MOREAU: Suppose they decided to proceed and perhaps to sell stock through an underwriter on the exchange, perhaps they would get only \$30.

Mr. LEMESURIER: But surely it depends on the sponsorship that a company has. No responsible underwriter is going to undertake financing before he raises money from the public at \$40, \$50 or at any other price per share unless there is some plan of operation, projection of earnings and so on, and he will sell stock on that basis. If you sell stock at \$50 and put \$50 in the treasury starting off it is not going to drop down to \$30. There is no rhyme or reason why it should. I do not think you ever would have a group coming out with a plan, raising their first capital of X million dollars, and expect the value to drop

to half. They have a plan and the company is going to do something, or they cannot raise the money. If they cannot satisfy the public that it is a sound operating plan and that the shares are worth \$50 they will not raise the money.

Mr. MOREAU: Well, I have seen a number of best laid plans go wrong. Certainly a number of issues which have come out have fallen substantially, and possibly this was because it was not a going concern. I agree with Mr. Finlayson when he asks why would Eastern & Chartered Trust Company shareholders be willing to exchange their shares for shares that were not worth \$50 without the virtue of possible exchange.

Of course, the other point is we have had continual references that Eastern & Chartered Trust Company shares should be treated as any other common stock, and I understand there is a restriction of 25 per cent in the holdings of other common stock. So, even with the manipulations that Mr. Otto is suggesting which could be done in a round about way it really is not possible.

Mr. LEMESURIER: As I mentioned several moments ago there is this restriction; if it was an ordinary industrial corporation World Mortgage Corporation could not invest its initial \$25 million in the common stock immediately. They would have to wait until they borrowed another \$75 million in the open market, so that they would then have a total of \$100 million in assets, as a result of which they could put \$25 million in common stocks.

Mr. MOREAU: Initially they would be restricted in their borrowing to 4 times capital, which would be \$10 million; therefore they could buy only \$2½ million worth of common stock.

Mr. LEMESURIER: Would you repeat that please?

Mr. MOREAU: I said that with the initial \$2½ million capital investment they could borrow only 4 times their investment, which would be \$10 million.

Mr. LEMESURIER: Correct.

Mr. MOREAU: And they would only be allowed to invest 25 per cent of that \$2½ million in common stock, so it would be an awful long way before it got up to \$100 million.

Mr. LEMESURIER: If you look at the initial capital as being \$2½ million, these figures are correct, but if we are talking about a comparable size transaction to the share exchange of Eastern & Chartered Trust Company shares then you are talking of raising \$25 million cash from the public.

Mr. MOREAU: We were talking about a \$2½ million investment in cash paid into the company, and then a transfer of shares, and this has been likened many times in the discussion yesterday and today as very much the same as any other common stock, and I am suggesting it is not. It could not possibly be and for the very reasons I have outlined, because with a \$2½ million cash investment you could only create assets through borrowing up to \$10 million, and you are permitted to invest only \$2½ million and not \$25 million in common stocks.

Mr. LEMESURIER: But if the company raised \$25 million of cash, made a cash offer for the shares of Eastern & Chartered Trust Company and at the same time they raised \$75 million of debenture money or other debt money, maybe partly from the bank to start off with or, perhaps over the counter or through an underwriting of debentures they could put themselves in a position of having \$100 million of total assets. This company could raise money very quickly, so its total assets could be \$100 million, and they could put \$25 million in common stock.

Mr. MOREAU: That is all, Mr. Chairman.

The CHAIRMAN: You are next, Mr. Wahn.

Mr. WAHN: If the question I am about to put has not already been answered I would like to know if there are any other well established and reputable financial institutions operating upon the bases proposed by World Mortgage Corporation?

Mr. FINLAYSON: I think that was dealt with yesterday, Mr. Wahn. We did refer to Canada Permanent.

Mr. LEMESURIER: Canada Permanent Mortgage owns Canada Permanent Trust. Then there is also Huron & Erie Mortgage which owns Canada Trust, and they have been operating for some years.

Mr. WAHN: And, this proposed section will apply to them as well as to all other companies such as World Mortgage Corporation.

Mr. LEMESURIER: Yes.

The CHAIRMAN: Unless I have overlooked someone I do not have any other questioners.

Mr. OTTO: In respect of what Mr. Moreau has said, he has put some impossibilities in the way, but the Bank of Nova Scotia could buy in the open market the shares of Eastern & Chartered Trust Company. Is that not right?

Mr. LEMESURIER: Yes, it could.

Mr. OTTO: And, for \$25 million, which is the amount you are going to pay, the Bank of Nova Scotia could buy the controlling interest of the shares of Eastern & Chartered Trust Company.

Mr. LEMESURIER: Yes.

Mr. OTTO: Could the Bank of Nova Scotia then give you their shares and in turn take the shares of World Mortgage Corporation?

Mr. LEMESURIER: Yes.

Mr. OTTO: So, we have the same result, do we not?

Mr. FINLAYSON: No.

Mr. MOREAU: Not if we do not allow the transfer of the shares.

Mr. OTTO: Let us say the Bank of Nova Scotia keeps these shares.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, you have the shares of World Mortgage Corporation, you could give the voting rights of the proxy to the bank.

Mr. LEMESURIER: When you say "you" do you mean the World Mortgage Corporation has them in its treasury, not yet issued, or that someone else owns them?

Mr. OTTO: No. You have issued shares of World Mortgage Corporation.

Mr. LEMESURIER: To the public?

Mr. OTTO: To the public. You have \$25 million.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, the Bank of Nova Scotia has the Eastern & Chartered Trust Company shares?

Mr. LEMESURIER: Yes.

Mr. OTTO: Then, you could make some exchange with voting rights or exercise some control with the voting and be fully protected without the amendment.

Mr. LEMESURIER: No. I am not sure that I follow you.

Mr. FINLAYSON: No. There are two things you are thinking of. If the Bank of Nova Scotia were to acquire all the shares of Eastern & Chartered Trust Company, and then exchange them.

Mr. OTTO: It does not exchange them; it just gives you the voting rights and control under a long term option agreement of 25 years.

Mr. LEMESURIER: We have no proposition in that respect.

Mr. OTTO: I know you have not but I am saying what you really want is that World Mortgage Corporation buy the shares.

Mr. LEMESURIER: Yes.

Mr. OTTO: And, you want to put them in the same status as any other shares you could use for a borrowing base.

Mr. LEMESURIER: Yes.

Mr. OTTO: So, what you really want is an amendment to allow you to do it in a straightforward manner.

Mr. LEMESURIER: Perhaps I am wrong but my understanding is that the proposed amendment to this bill in itself will not give the right of the share exchange initially but that will have to come in the private bill, so they initially can have the right, on \$27.5 million of capital in World Mortgage Corporation to have \$25 million invested in Eastern & Chartered Trust Company shares.

Mr. OTTO: That is right.

The CHAIRMAN: Would you proceed, Mr. Scott.

Mr. SCOTT: I would like to raise a point in connection with the explanatory note opposite page 53 under subsection 3, the last sentence, beginning:

The new provision would require that where a loan company owns a substantial proportion of the shares of a trust company the borrowing limit that previously applied to each company separately will also apply to the two companies taken on a consolidated basis.

Do you agree that that is the effect of this section?

Mr. LEMESURIER: Generally speaking, I believe that is the effect, yes.

Mr. SCOTT: In your opinion, is that not a perfectly reasonable proposition?

Mr. LEMESURIER: No, I do not think it is necessarily, at all. There are numerous situations where debt is not taken on a consolidated basis, if there is a special reason for it. You could have an operating merchandising company and it might have certain restrictions in its own trust deed, in respect of how many debentures it could issue. It might have a wholly-owned finance company, an acceptance company. It is the trust deed that determines the amount of debentures which the operating department store might have outstanding. In many cases, it will not require the consolidation of the total debt of its acceptance company subsidiary on the basis that the businesses are basically different and that there is no reason the two should be consolidated.

Mr. GELBER: But, for operating purposes they would net out the subsidiary shareholdings. Any consolidated statement takes each shareholding as an additional asset.

Mr. LEMESURIER: Not necessarily. If you had an established operating company which wanted to buy shares, possibly at a negotiated price, but it had an arms length price which reflected their true value they would put the shares of the subsidiary they purchased, which might be an acceptance or finance company—that is, they could put the shares in their books on the asset side of the balance sheet at the price the top company paid for the common shares. There is usually a net tangible asset test in respect of an operating company borrowing a certain number of times its equity, and they often are able to include the shares of the subsidiary in the formula at the price which they paid for the shares.

Mr. GELBER: But, as a full subsidiary you would not keep multiplying and adding up the value of subsidiaries; you take the net asset value of the entire complex.

Mr. LEMESURIER: It depends what the business is.

Mr. GELBER: Well, let us say if it is equally held, no lending institution would add to the capital value of a holding corporation the investment it has in the shares of its subsidiary. It is not required.

Mr. LEMESURIER: It depends what the nature of the business is. Suppose there was going to be an underwriting of World Mortgage Corporation debentures and the Trust Companies Act restricted the amount which the trust company could borrow but the Loan Companies Act did not restrict the amount of borrowing of a loan company because loan companies were not regulated. If that was the case as the loan company borrowed, you might very well draw the trust deed of the loan company on an unconsolidated basis because you were satisfied there was more value in the shares of the trust company, and you would use them as part of the borrowing base in the loan company.

Mr. GELBER: Well, you have had a great deal of experience on both sides of Bay street or, perhaps I should say along King street on either side of Bay. When you issue a prospectus you net out subsidiary investments, in certain situations, if it is fully owned.

Mr. LEMESURIER: It depends. In certain situations you do, but when you have a special situation, an investment in a well established going concern business or that of a finance company which becomes your subsidiary you would not necessarily consolidate them.

Mr. GELBER: But it probably would not be the same type of business.

Mr. LEMESURIER: That is correct.

The CHAIRMAN: Gentlemen, do you wish to have the witness stand down now?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Gentlemen, if you wish to leave your amendments here, together with any others you wish to submit in writing, I can assure you that when we continue with the clause by clause coverage of the bill your amendments will be given full consideration, the same as all others.

Mr. MOREAU: I take it that you would prefer this to what you suggested yesterday.

Mr. FINLAYSON: That is correct. It was pointed out to me that simply striking out these words in the brackets was not really going to help us, because you have the trust company which can now borrow at 12 times its base and the loan company would only be entitled as a right to borrow four times its base, so you cannot really consolidate them in that way.

The CHAIRMAN: Is it the wish of the committee to have the superintendent of insurance give evidence at this time?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Humphrys, would you please come forward.

Mr. OTTO: Are we going to consider this particular section now or are we going to proceed clause by clause?

The CHAIRMAN: I will let Mr. Humphrys give whatever evidence he wishes to the committee at this time, and then we will take up the bill clause by

clause. We broke off at the beginning of the trust company section and we will pick it up there and continue through clause by clause. At least, that is my suggestion.

Mr. CAMERON (*High Park*): Is Mr. Humphrys prepared to make some comments on this proposal?

The CHAIRMAN: Yes, and the committee could then put some questions to him. Is it your wish that Mr. Humphrys make certain comments at this time or do you want to direct questions to him?

Mr. MACALUSO: What does Mr. Humphrys think of the proposed amendments?

Mr. Richard HUMPHRYS (*Superintendent of Insurance, Department of Insurance*): Well, the purpose of this provision, as I mentioned when we discussed it a few meetings ago, is to deal with the parent-subsidiary relationship. In the absence of this consolidation rule the owners of a trust company would be able to borrow substantially more than is intended by the borrowing limit. They could do so by forming a loan company and exchanging their trust company shares for shares of the loan company. They would then be in a position through the loan company to borrow by the issuance of debentures, which a trust company cannot do. Also, they would be able to borrow a multiple of the capital of the new loan company.

Now, the multiple would depend upon whatever multiplier had been approved for the company in accordance with the provisions of the act. This has much the same effect as permitting a trust company to increase its borrowing on the basis of its existing capital structure. I think the matter might be rather clearly illustrated by looking at it from this angle. The essential powers that a loan company has which a trust company does not have in respect of this borrowing question is the power to issue debentures. If the proposal before the committee were to authorize a trust company to borrow by the issuance of debentures would it be reasonable to suggest that not only should the trust company have power to borrow by debentures but also that it should be able to borrow a further multiple of its capital of the surplus equal to what it is already able to borrow; that is, not only give it the power to borrow by debentures but greatly increase its borrowing power at the same time.

If you take it a step farther and say not only should the trust companies be able to borrow double what it could before but also it should be able to increase its surplus for the purpose of a borrowing base by taking into account possible future earnings (which is the effect achieved by adding in the difference between the shareholders equity as it appears on the balance sheet of the trust company and the total market value of its shares as they appear on the exchanges) then you get an enormous expansion in the borrowing power.

In the discussion, the example has been used on a number of occasions of the power of a loan company, say, to invest in other shares and the question has been asked, what is wrong with trust company shares that they require special treatment? Well, I would say that there is nothing wrong with trust company shares. We hope there is nothing wrong because part of our business is to try to see to it that the financial position of trust companies is sound. But, I think the problem here is in the parent-subsidiary relationship.

If there were no exceptions to the rule that a loan company could not buy more than 30 per cent of the shares of any other company, then I believe there

would be no need for a consolidation rule. We have two exceptions of loan companies that do own subsidiary trust companies. These examples have been in existence for a long period of time. The parent-subsidiary relationship existed at the time that the 30 per cent rule was introduced in 1922, and an exception was made from the 30 per cent rule in favour of these companies because the situation was then existing. And, there have been no other exceptions since that time until the proposed incorporation of World Mortgage Corporation. Of course, this company is not yet incorporated but it has been considered by the Senate and passed by the Senate, including in the private bill an exception from the 30 per cent rule.

In this bill now before you one of the amendments to the bill that was tabled would propose that trust companies generally be given this power subject to some supervision. But, in the light of the possibility at least of further parent-subsidiary relationship being established then it is necessary to adopt a consolidation rule if the borrowing limit otherwise prescribed is to be meaningful.

Reference was made yesterday to the remarks that Mr. MacGregor, the former superintendent of insurance, made in the Senate committee, where he stated that if parent-subsidiary relationships are to be allowed in this general field probably loan companies and trust companies are the least objectionable of the pairs. Further, in this evidence he did oppose the making of an exception to the general limitation in the act that would put a limit of 30 per cent on the shares of any company that could be purchased. He also said that in his view if an exception is to be made—or, rather, if the limitation is wrong—then, the general act should be changed rather than deal with exceptions that might come along from time to time.

Further, he said that if an exception were made, then it was essential that a consolidation rule be adopted in order to make the borrowing limit meaningful.

It has been suggested that no consolidation rule is needed because the superintendent of insurance and the treasury board have authority to impose whatever limit they think is needed in specific cases. Now, this is tantamount to saying you do not need a borrowing limit in the statute, but it should be left to the discretion of supervisors or government officials to impose a limit in the particular case. This is a point of view which may be held quite widely and quite reasonably. I myself do not believe, from the point of view of a supervisor, that it is a sound approach. I agree you cannot exercise appropriate supervision in a blind fashion by merely looking at rules. But, I do think they serve as a guideline and, at least, as an outside limit.

I think, in the absence of rules, there would be no practical way of administering these provisions without adopting a rule for the purpose of the supervisors, and we would be back in the same position.

There was one particular point raised that I think certainly merits some explanation, and that is the possibility, or the problem, that might arise if the approved multiplier for the two companies in a parent-subsidiary relationship were different. The example used was where the subsidiary trust company had an approved multiplier for borrowing purposes of $12\frac{1}{2}$ times its capital and surplus and the parent company had an approved multiplier of only 4 times. The application of the consolidating rule in this situation could—if the subsidiary were borrowed to its limit and if the subsidiary were large compared to the parent—result in the parent company not being able to borrow. The con-

solidation rule has been drawn in this way to permit the application of the borrowing ratios that may be approved in the particular circumstances to be applied. It would not be expected in a case such as was under discussion that the new company would be held to a borrowing limit that, in effect, would stultify its operations. Where a company has good backing and where its pattern of operation is clear, the experience and general rule used has been to permit the borrowing limit to rise quite rapidly. In the case under discussion, it would very likely be a case where the borrowing limit of the parent would go up very rapidly, so this particular effect would not be experience in any serious way.

There has been a good deal of discussion on the question of the value of shares of a subsidiary in the balance sheet of the parent. I think in some circumstances it may be perfectly in order for investors to carry their investment on their books at the market value, or at what they paid for it. In fact, this is the normal practice and the permitted practice for trust companies and loan companies. The valuation limits say that they may not carry their securities on their balance sheet at a valuation that exceeds the market valuation; but different considerations apply when you have a parent and subsidiary relationship. Here the possibility is open for a subjective value on the part of the parent in respect of the value of the shares and, where this situation exists, the exchange of shares can be made at values that are determined by those who own the complex of companies. It may or may not be related to the equity value in the subsidiary and the value at which minority shareholders are buying and selling shares on the market. It may be determined on many different bases. It is just this difficulty of selling upon the value of shares of a subsidiary that leads to the widespread practice in business and industry of showing consolidated balance sheets so that this question of the value of shares in excess of the net equity in the subsidiary does not enter the consolidation by way of inflating the total assets.

I do not raise this in any sense of criticism, but an illustration of this difficulty was brought out in the discussion where it was suggested, in the particular illustration, that shares of a subsidiary might be put on the books at \$50. When this same company was being considered by the Senate, the figure of \$55 was mentioned. I do not know which is appropriate. However, it illustrates the difficulty of ascertaining an appropriate value. The \$5 difference there, multiplied by 500,000 shares, results in a difference in the borrowing limit of perhaps \$30 million.

In permitting an investment of up to 10 per cent of one of these companies in shares of another, some recognition is given to the fact that, on a normal investment basis, shares of the trust company in the balance sheet of a loan company, or vice versa, can be treated in the same fashion as any other shares, and they would be so treated.

The question then may be asked, why, if the main problem is the parent-subsidiary relationship, is a 10 per cent figure used instead of 50 per cent. The answer is that if the consolidation rule were to operate only where the share ownership was in excess of 50 per cent, it would not necessarily be completely effective in all cases because you might have two companies each owning 45 per cent of the shares of the trust company, or three companies, each owning 30 per cent. Therefore, it was considered that the limit should be placed at some point where there would be room for some degree of investment which might be considered a normal investment basis. However, when the investment became substantial, moving up into an area that begins to move to the point where the

investment is more than an incidental investment, but begins to enter into the realm of control, then the consolidation rule should come into effect.

Where control becomes operative, no one can say. There is no special magic in 10 per cent compared to 9, 11 or 12 per cent, but it is a figure that is reasonably current in discussions concerning the limit of investment of one company in another where control is to be avoided. It was used by the royal commission on banking and finance. It is a figure that commonly is used by mutual funds. So, it is a figure that is in common currency for this particular purpose. It is true it is not quite consistent with the 30 per cent limit now in the act; that is a rather high figure. It is an old figure which was introduced in 1922; it had its origin there.

I think those are all the general remarks I wish to make, Mr. Chairman. The principal point I would like to emphasize again is that it is a question of parent-subsidiary relationship that gives rise to this particular problem. If the consolidation rule is not adopted, the way will be open generally for a great expansion of borrowing beyond the limits otherwise intended, and to an extent that would make the borrowing limit very largely meaningless.

Mr. GELBER: Mr. Humphrys, is the World Mortgage Corporation taking money from the public by way of deposits?

Mr. HUMPHRYS: The company has not been incorporated yet.

Mr. GELBER: Is it proposed?

Mr. HUMPHRYS: The company, if incorporated, would have the corporate power under the Loan Companies Act to accept deposits from the public.

Mr. GELBER: Is that the reason you want to control its ratio of borrowing? I wonder why you are concerned.

Mr. HUMPHRYS: We are concerned because it is a company subject to the Loan Companies Act and will have the power to accept deposits from the public and borrow from the public by the issuance of debentures. In subjecting this particular class of company to a general supervisory act and placing borrowing limits on them, parliament has imposed the supervisory requirements from the point of view of protecting the public, whether the public consists of depositors or purchasers of loan company debentures.

Mr. GELBER: Thank you.

The CHAIRMAN: Are there any further questions? If there are no further questions, gentlemen, I would respectfully suggest that we carry on until noon, because everyone has difficulty getting to meetings and the pension committee, I presume, will be sitting shortly; some of the members no doubt will be diverted to that committee.

For those who were unable to attend the last meeting, what we have been doing up to date is that we have covered everything up to the end of clause 25 on page 31. Some of the clauses in between have been stood because it was thought these involved policy matters. We dealt with other clauses which more or less were of a mechanical nature.

If it is the wish of the committee, I would suggest we proceed until 12 o'clock.

Agreed.

Mr. FINLAYSON: May we retire, Mr. Chairman?

The CHAIRMAN: These meetings are open and you are quite free to leave or remain. Any amendment you have submitted today will be stood. The

matters you raise will be given every consideration and a full discussion when we are going through the routine sections. You are excused or you may remain if you wish.

Mr. FINLAYSON: Thank you. I think we will leave.

The CHAIRMAN: We will proceed to page 31.

Clauses 26 to 28 inclusive agreed to.

On Clause 29—*Definitions*.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Again we have this business of a definition of a non-resident. This is quite vaguely worded. You may recall that I brought this up earlier in the hearings. Perhaps Mr. Humphrys might tell us how he would interpret this. It is subsection (b) of subsection (i) of section 36A:

an individual who is not ordinarily resident in Canada

Is there any specific time limit on this?

Mr. HUMPHRYS: No. It would be up to the directors who are considering the proposed transfer of shares to make whatever investigation they think necessary to satisfy themselves in respect of the normal residence of an individual and to make their decision in that regard.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But the legislation does not provide those directors with a yardstick upon which to make their decision?

Mr. HUMPHRYS: That is correct.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): If I may, I would like this clause to stand.

The CHAIRMAN: If I may be allowed to agree with what Mr. Cameron says, I might point out that we already have asked that the similar clause relating to the insurance companies in this regard stand.

Mr. MOREAU: In the amendments which were circulated, clause 29 is to be remembered as clause 30. The amendment states:

That clause 29 be amended

(a) by striking out lines 45 to 47 on page 37 and lines 1 to 4 on page 38 and by substituting therefor the following—

It is very lengthy.

The CHAIRMAN: This is in the proceedings?

Mr. MOREAU: Yes. It is on page 75 of Minutes of Proceedings and Evidence No. 5.

The CHAIRMAN: I would suggest that we deal with the amendment and if it carries I will stand the section as amended.

Mr. HUMPHRYS: When this amendment was being considered in connection with the earlier part of the bill, there were some words added at the end of the first paragraph.

The CHAIRMAN: What are they?

Mr. HUMPHRYS: I think the clerk would have them.

The CHAIRMAN: I understand that the proposed amendment was to include these additional words to which we are now referred by Mr. Humphrys:

This subsection shall not be construed to prohibit exercise of voting rights in circumstances where section 36C does not apply.

Does the amendment carry?

Amendment agreed to.

Clause 29, as amended, stands.

On Clause 30—*Contents of report.*

The CHAIRMAN: It has been brought to my attention in respect of clause 30 that the Trust Companies Association had left with us certain suggested amendments. I think they should be stood. With the concurrence of the committee, we will stand clause 30.

Agreed.

Clause 30 stands.

On Clause 31.

Mr. HUMPHRYS: Clause 31 contains amendments to the investment powers of trust companies and the Trust Companies Association requested certain amendments which would affect clause 31.

Clauses 31, 32 and 33 stand.

Clauses 34, 35 and 36 agreed to.

On Clause 37—*Definitions.*

Mr. MOREAU: There is an amendment to the effect that clause 37 be amended by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50, and by substituting therefor the following—

The CHAIRMAN: I believe this is all set out on page 76 of our Minutes of Proceedings and Evidence No. 5.

Amendment moved by Mr. Moreau, seconded by Mr. Macaluso.

Amendment agreed to.

Clause 37, as amended, stands.

Clauses 38 and 39 stand.

On Clause 40—*Limitation of borrowing powers.*

Mr. MOREAU: There is an amendment to this clause.

The CHAIRMAN: I think there is an amendment which was proposed this morning by Mr. Finlayson.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The amendment proposed by Mr. Finlayson is not before the committee.

Mr. MACKASEY: For the purpose of discussing the amendment, I will move that it be before the committee.

Mr. SCOTT: I second the motion.

Clause 40 stands.

On Clause 41—*Limitation on holding of land.*

Mr. MOREAU: There is a new clause to be inserted here as clause 41:

The said act is further amended by adding thereto, immediately after section 61 thereof, the following section—

And so on. I will not read the amendment because it is a rather long one. It further states that the present clauses 40 and 41 be renumbered as clauses 42 and 43 respectively.

The CHAIRMAN: I think there should be a separate motion in respect of the numbering. Perhaps Mr. Humphrys might tell the committee the gist of this proposed amendment.

Mr. HUMPHRYS: This amendment would give loan companies the general power to own the shares of trust companies apart from the 30 per cent limitation that is now in the act on the investment of shares. It would permit a loan company to own a trust company as a subsidiary. I believe this clause should be allowed to stand until decisions have been reached in respect of the consolidation rule.

The CHAIRMAN: With the concurrence of the committee we will stand the proposed amendment.

Amendment stands.

Mr. MOREAU: There is a final amendment that this clause be renumbered 42 and the subsequent clause, which is 41 in the proposed bill, now become clause 43.

The CHAIRMAN: We will have to stand that too, because this is consequential upon the fate of the one you moved immediately before this.

Mr. MOREAU: I appreciate that.

Clause 41 agreed to.

The CHAIRMAN: This brings us to another matter. The minister will be appearing before the committee in respect of some of these clauses we have stood. I can give you a day's notice and I am asking the indulgence of the committee in this regard. The minister now is receiving submissions on the budget, as you know. He said he would advise me when would be a convenient day for him. If I have your authority I will adjourn now until the call of the Chair. Is that agreeable to the committee?

Agreed.

(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964

STANDING COMMITTEE

ON

CANADA

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

(THURSDAY, NOVEMBER 26, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

WITNESSES:

(The Hon. Walter L. Gordon, Minister of Finance; Mr. Richard Humphrys,
Superintendent of Insurance.)

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY

OTTAWA, 1964

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Grafftey	Moreau
Armstrong	Gray	Mullally
Asselin (<i>Notre-Dame- de-Grâce</i>)	Grégoire	Munro
Basford	Greene	Nowlan
Bell	Habel	Nugent
Blouin	Hales	Otto
Cameron (<i>High Park</i>)	Jones (Mrs.)	Pascoe
Cameron (<i>Nanaimo- Cowichan-The Islands</i>)	Kindt	Rynard
Caouette	Klein	Scott
Chrétien	Lambert	¹ Skoreyko
Côté (<i>Chicoutimi</i>)	Leblanc	Tardif
Douglas	Lloyd	Thomas
Frenette	Macaluso	Vincent
Flemming (<i>Victoria- Carleton</i>)	Mackasey	Wahn
Gelber	McCutcheon	² Watson (<i>Châteauguay- Huntingdon-Laprairie</i>)
	McNutly	Woolliams—50.
	More	

Dorothy F. Ballantine,
Clerk of the Committee.

¹ Replaced Mr. Monteith, November 23, 1964.

² Replaced Mr. Whelan, November 20, 1964.

ORDERS OF REFERENCE

FRIDAY, November 20, 1964.

Ordered,—That the name of Mr. Watson (*Châteauguay-Huntingdon-La-prairie*) be substituted for that of Mr. Whelan on the Standing Committee on Banking and Commerce.

MONDAY, November 23, 1964.

Ordered,—That the name of Mr. Skoreyko be substituted for that of Mr. Monteith on the Standing Committee on Banking and Commerce.

Attest.

LEON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, November 26, 1964.

(19)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Habel, Klein, Lambert, Lloyd, Macaluso, Moreau, Mullally, Otto, Pennell, Skoreyko and Thomas.—(18)

In attendance: The Hon. Walter Gordon, Minister of Finance; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman welcomed the Minister and invited him to make a statement.

The Minister made a statement dealing with some of the question raised during earlier proceedings and said he was prepared to answer any additional questions.

The Committee then resumed consideration of the clauses which had been allowed to stand.

On Clause 3

The Minister was questioned, and was assisted by Mr. Humphrys in answering questions.

Clause 3, as amended, was carried, on division.

On Clause 5

The Minister was questioned and the clause, as amended, was carried.

On Clause 6

The Minister was questioned and was assisted by Mr. Humphrys. The clause was carried.

Clause 11 was carried.

Clause 13 was carried, as amended.

Clause 14 was carried, on division.

Clauses 15, 16 and 17 were carried.

Clauses 19 and 20, as severally amended, were carried.

Clause 29, as amended, was carried, on division.

Clauses 30, 31 and 32, as severally amended, were carried.

On Clause 33

Mr. Humphrys was questioned and the clause, as amended, was carried, on division.

On Clause 37

The Minister was questioned and the clause, as amended, was carried, on division.

Clause 38, as amended, was carried.

Clause 39, as amended, was carried, on division.

On motion of Mr. Moreau, seconded by Mr. Otto,

Resolved,—That the present Clauses 40 and 41 be amended by renumbering as clauses 42 and 43, respectively.

On Clause 40

The Chairman reminded the Committee that at the last meeting an amendment requested by the World Mortgage Corporation had been moved by Mr. Mackasey and seconded by Mr. Scott, for purposes of putting it on the record, and had been allowed to stand.

And the question having been put on the proposed amendment of Mr. Mackasey, it was negatived on the following division: Yeas, 2; Nays, 7.

Clause 40, as amended by renumbering, was carried.

Clause 41, as amended by renumbering, was carried.

The Chairman then put the question on the motion of Mr. Moreau for further amendment of the Bill by insertion of a new Clause 41, which had been allowed to stand, and the amendment was carried.

On motion of Mr. Macaluso, seconded by Mr. Lambert,

Resolved,—That a new clause 44 be inserted immediately after the renumbered Clause 43 as follows:

“44. Sections 31 and 39 shall come into force on the 1st day of January 1966.”

The Title was carried.

The Bill, as amended, was carried, on division.

The Chairman was directed to report the Bill, as amended.

On Motion of Mr. Moreau, seconded by Mr. Macaluso,

Ordered,—That the Bill, as amended by the Committee, be reprinted.

At 12.05 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

NOTE: The Ninth Report to the House respecting Bill C-123 will be included in a subsequent issue.

EVIDENCE

THURSDAY, November 26, 1964.

The CHAIRMAN: Gentlemen, I see a quorum. I will ask the committee to come to order.

We are honoured this morning with the presence of the Minister of Finance, and with the permission of the committee the minister will make a statement relating to Bill No. C-123.

Hon. WALTER L. GORDON (*Minister of Finance*): Mr. Chairman, first of all I apologize for being late. I like to think that I was brought up to be reasonably punctual, but I got into some difficulties this morning. I have been kept informed about the various points that have been raised in the course of the committee's discussions, and I thought that perhaps it might save time if I prepared some notes on them and, as the chairman suggested, start off by reading a memorandum which I have here.

I understand that the attention of the committee is now directed particularly at those provisions of Bill No. C-123 that relate to the investment powers, provisions designed to retain in Canada ownership and control of federally incorporated insurance companies, trust companies and loan companies, not now under foreign control, and to the borrowing power of trust companies and loan companies. This brief statement will therefore relate to these matters.

In considering investment powers, it is essential to keep in mind that the purpose of having any legislative limitation on the investment powers of insurance companies, trust companies and loan companies, is to safeguard the interests of those who have entrusted sums to them, whether in the form of insurance premiums, savings deposits, or money lent through purchase of debentures or guaranteed investment certificates. The investment provisions should therefore be so drawn as to establish a general framework of a good quality of investment, and care must be taken in making changes that broaden this framework.

It is to be recognized at the same time that the pool of assets accumulated by these companies forms a very important source of investment capital in the Canadian economy, and for this reason it is in the public interest that these funds be allowed to play a useful and flexible part in the development of the economy. This end is best accomplished by broadening the investment powers as far as is reasonably possible in the light of their fundamental purpose, and then letting the investment judgment of the individual companies allocate the funds in accordance with the market demand and the discharge of their obligations toward their policy holders, depositors, debenture holders, and share holders. This balance the bill attempts to achieve. The amendments proposed would very materially broaden investment powers while still maintaining a standard of quality consistent with the broad purpose of the investment provisions.

For common shares, the present requirement for a seven year dividend record would be reduced to five years, and a new earnings test would be introduced to qualify common shares on an earnings basis, regardless of dividend record. Further, the provision enabling insurance companies to invest at their

own discretion would be amended to raise the maximum amount that might be so invested from five per cent of a company's assets to seven per cent. The maximum limit on investment on common shares would be increased from 15 per cent of a company's assets to 25 per cent. These changes broaden very materially the power of these companies to invest in common shares.

I would like to interject at this point, if I may. I understand that some members of the committee questioned whether an earnings test based on five years was too restrictive. I think suggestions were made that it might prevent an investment in the shares of a company that had one bad year out of five. I would remind you, however, that the so-called basket clause which will now amount, if this bill is approved, to seven per cent of the company's assets, would be ample to take care of a situation of that kind; that an investment in the shares of a company that had one bad year out of five could be made and included under the basket clause, and as soon as there is a clear five year record, it would then be moved out of the basket category and into the 25 per cent of the company's assets that may be invested in common shares.

For mortgages, companies would be permitted to lend up to three quarters of the value of the real estate instead of up to two thirds as at present. This also represents a broadening of investment powers, but one that can safely be made. Experience under mortgage lending in the last 20 years has been good, and the almost universal practice of monthly repayment has greatly improved the security of these investments. I think this is a point that perhaps I did not stress sufficiently on second reading, but the fact that the principal is paid down on a monthly basis certainly does give the investor a considerable measure of security that he would not have if he had to wait until the end of the mortgage term.

Insurance companies would be given broader powers to invest in real estate for the production of income either directly or on an equity basis through subsidiary real estate companies.

All this adds up to a significant broadening of investment powers, and it is about as far as it seems to us anyway desirable to go at the present time.

Concerning the provisions relating to Canadian ownership and control, it has already been noted that the essence of the plan is to limit to a maximum of 25 per cent the proportion of the shares of a life insurance, loan or trust company that may be held by non-residents, and to limit to 10 per cent the proportion of the shares that may be held by anyone non-resident together with the associated shareholders. This permits a very considerable degree of investment participation in such companies by non-residents, but will ensure that control remains in Canada.

Some question has been raised, or at least doubts have been expressed, concerning the administrative problem. These problems are perhaps not easy, but I believe that the provisions as drafted are quite workable, and so I might say do the people concerned. The responsibility for the application of the limitations is placed on each company. The directors of the company, through their control on the entry of transfers in the share register, will have to exercise their judgment in allowing or refusing to allow transfers as required by the proposed new sections.

Now of course, some borderline cases may have been found, or opinions may differ, on the question of the control or residence. In drafting the legislation the choice here is between, on the one hand, using a broad definition and leaving borderline cases to someone's discretion, and, on the other hand, attempting to write a precise definition of all such terms. The choice in the bill is in favour of the former alternative. The reasons are in the main that it is

difficult, if not virtually impossible, to write definitions with such precision as to sweep in all the cases which should be swept in within the spirit and intention of the law and leave out those that should not be swept in. However, some element of discretion is necessary to deal with borderline cases, and in any event investors are careful of their own money and are not likely to make any substantial investment where their rights may be open to question. The provisions are therefore, to considerable extent, self-regulating.

If the choice is in favour of leaving some element of discretion, the next question is who is to exercise it? The bill proposes to leave the discretion in the hands of the directors of each company. It is considered that they can be relied on to exercise such discretion in the spirit and intention of the law. This approach makes it unnecessary to invoke a more cumbersome procedure that would be necessary if the discretion were to rest with, say some government official.

When I say that I am thinking of the superintendent of insurance who, I am sure, would prefer not to have that discretion. I do not see that this is a very major point. If, in a particular case, there was a transfer which might bring the percentage held by non-residents up to 25.10 per cent, and there was some question whether the transferee was really a non-resident or not, I would think that if the directors decided to give that particular transferee the benefit of the doubt, and if they were wrong and it only brought it up to 25.10 per cent, I do not think any serious damage would be done. What we are trying to do is to limit the total investment by non-residents to 25 per cent. I can assure you there are a whole lot of difficult borderline cases, and ideally I am sure we would all agree if we could be absolutely precise that it would be preferable, but this will provide a much greater degree of flexibility, and as you know, provisions are made so that the directors are in a position to find out if they have any doubts and wish to do so.

On the question of residence, I believe the difficulties of interpretation would be few and then only in relation to individual persons rather than corporations. The main pattern of takeovers has involved purchase by foreign corporations rather than individuals.

If in a particular case a person is living in Canada for periods such that anyone can reasonably take the view that he is "ordinarily resident in Canada," I believe it would be within the spirit and intent of the law to treat him as a resident for purposes of these provisions. It would be left to the directors to make a decision in individual cases where a transfer of shares is involved. However, it is important to note that if shares are transferred, the shareholder does not have to worry about his status after that, unless he owns a very large block of shares—over 10 per cent. The small shareholder has full voting rights, whether he is a resident or a non-resident.

It is important to note also that any shareholder having more than 10 per cent of the shares of a company is prohibited from voting if he is a non-resident (except, of course, in the case of shares owned on the day the bill was introduced, which are exempted from these restrictions on the ground that there is no thought of applying these proposals retroactively.) Even if as a result of a very broad interpretation of the meaning of the phrase "ordinarily resident in Canada", a particular individual accumulated more than 10 per cent of the shares, the opinion of the directors would not necessarily confirm his voting rights. Thus, there is a protection against a strained interpretation of the definition, carelessness or inattention on the part of the directors.

If a dispute or a question arises respecting the voting rights, it would be a matter for the court to decide in connection with the imposition of any penalty. It seems unlikely however that any person would invest so heavily in shares of one of these companies as to accumulate more than 10 per cent of the shares unless he were certain of his voting rights.

As respects the borrowing powers of trust companies and loan companies, it is to be noted first that the proposal is to expand their powers, subject to the treasury board approval, from a maximum of $12\frac{1}{2}$ times capital and surplus to 15 times. This is a further step in the long trend of expanding these powers, and one that can now be safely taken in the light of the strong position and experienced management available, at least as respects the major companies.

The other measure proposed in this connection would require a consolidation of assets and liabilities where a loan company owns a substantial interest in a trust company and vice versa. I believe that such a consolidation is necessary in order that the borrowing limit be effective. There would be little point in prescribing a limit but permitting it to be greatly expanded by forming two companies in the place of one, and then perhaps three in the place of two, and then perhaps four in the place of three, and so on by pyramiding it up ad infinitum. This could equally happen if this approach were not taken.

One of the reasons for avoiding parent-subsidiary relationships in companies such as life insurance companies, trust companies and loan companies, is the importance of maintaining a clear and sound financial position. The whole extensive legislative pattern is designed to safeguard and publicize the financial position of each such company. Where parent subsidiary relationships are allowed, and we are moving in that direction in this bill, it is most important to ensure that assets are not inflated by carrying shares of the subsidiary on the books of a parent at values in excess of the shareholders equity in the subsidiary. I do not know if there are any members of my own profession present, but if so I will take it for granted that they will agree with this as axiomatic. While it may be that a particular investor would take into account possible future growth and earnings in deciding how much he would pay for a company's shares, it would be most dangerous to permit a company to treat as an asset held against the deposit liabilities an estimate of future earnings, whether this were done directly by inflating the assets of the company or indirectly by establishing a parent subsidiary relationship.

There are, at the present time, two parent-subsidiary relationships in the loan and trust field as respects federally incorporated companies. As the law now stands, these companies could expand their borrowing by using a particular injection of capital twice over, once in the parent, and again in the subsidiary, or even by writing up the value of the shares of the subsidiary in the books of the parent with no new capital at all. However, the companies in question have not borrowed beyond the limits that would be available to them under the proposed consolidation rule.

Perhaps I should just emphasize this, that there are two companies and they actually have been concerned about this. However, they have been careful in their administration and they have not over-borrowed, and if we approve the expansion of the borrowing powers from $12\frac{1}{2}$ to 15 times their capital and surplus, which I think is a perfectly safe thing to do, then both these two cases will be in the clear.

But the existence of these two cases and the existence of the extra borrowing capacity available to them because of the ability to borrow twice on the same capital or increase the value of the shares of the subsidiary, has been used as an example to justify a further exception to the general rule that prevents a loan company owning more than 30 per cent of the shares of any other company.

The question of borrowing limits in the case of a parent-subsidary relationship must therefore be dealt with specifically. I believe that the door must be closed to expansion of borrowing limits through establishing a parent-subsidary relation. I am only saying we should not allow that relationship to permit a greater degree of borrowing than we would otherwise permit in the case of individual companies. This is of course elementary to Mr. Lloyd. When you look at these things you must look at them on a consolidated basis or you might get into the kind of trouble that others have got into through pyramiding in the past, in other spheres and at other times and in other circumstances. The time to deal with this situation, it seems to me, is when the act is under review and before we are confronted with a difficult situation. We are not confronted with a difficult situation now and that is why I want to tidy it up while we are reviewing this bill.

To go back to my previous remark, I believe I said that the door must be closed to the expansion of borrowing limits through establishing a parent-subsidary relationship. If it is not, then other cases will come along seeking the same privilege, and the result would soon be not a borrowing limit of $12\frac{1}{2}$ times or 15 times the shareholders' equity but 25 times, 30 times, 100 times—the whole thing would get out of control.

The proposed consolidation rule would not close the door to the formation of new loan companies or to the establishment of parent subsidiary relationships. The two examples now existing have operated for years within the borrowing limit that would be established under this bill by the consolidation rule. New loan companies are being formed without any subsidiaries; there have been five in the past two years, and another is now before parliament. The capital paid in has, in each case, been of the order of \$3 million or less.

Gentlemen, those were the preliminary remarks I wished to make and which I thought it might be useful to make. If I could expand on them in any way or answer any questions, I would be glad to try to do so.

The CHAIRMAN: I think some members of the committee have already anticipated your offer. Mr. Moreau and Mr. Lambert have already put their hands up.

Mr. MOREAU: Mr. Gordon, I was wondering what your reaction would be to amending the provision on the non-resident definition in clause 3 of the bill, Part 1 in particular, which reads "An individual who is not ordinarily resident in Canada" to read "An individual who is a Canadian ordinarily resident in Canada"? The reason I say that is that it would seem to me that it would encompass a lot of the borderline cases that might not be clear such as cases of people trying to reside or residing in Canada. Perhaps a further inclusion of Canadian citizenship status might be desirable.

Mr. GORDON: Quite frankly we did give quite a lot of thought to including the citizenship question, but I think that if we did we would impose very severe administrative problems on the companies concerned. They just do not know whether people are citizens or not. There are thousands and thousands of people who are residents of Canada and have lived here for many years but who have not gone through the technical process of taking out their citizenship, including, I would think, about half the residents of my riding—not that the residents of my riding are in a special position to invest in these companies—but that is a fact. Also, many people have no reason for taking out a Canadian citizenship, for instance if they are British subjects. There are many U.S. citizens living in this country who have not taken out Canadian citizenship because they would forfeit certain benefits or potential benefits if they did so. As long as they are living here and are really

normally residents of Canada, I would think they would probably acquire a Canadian point of view. However, the main problem, to be perfectly frank, is that I do not see how you could administer it.

Mr. MOREAU: I think that in the case of British subjects we have recognized in many ways that a British subject can vote, and I certainly would not take exception to that. However, it is my understanding that after you have lived in the United States for five years you darn well have to take out U.S. citizenship or you are out.

Mr. GORDON: I think that is probably a point that this committee or some other committee will probably wish to go into when the citizenship act is up for amendment, but I do not know whether we should deal with that in a financial bill.

Mr. MOREAU: Perhaps you are right.

Going on to the loan company consolidation aspect, I should like to say—

Mr. LAMBERT: Mr. Chairman, on a point of order; could we deal with subject matters rather than allow each member to proceed with all his questions? We could then clean up this matter of residence which is one of the areas of the bill that has been left open. After that, we can go on to the question of the loan companies and the trust companies relationship because that also would generate a little bit of discussion. I think we could relate our discussion a lot more closely that way.

Mr. MOREAU: I have no objection to that.

The CHAIRMAN: I would think there is merit in that suggestion. Could we first deal with the major sections which have been stood? Your first question, Mr. Moreau, was pertinent to clause 3, and so I will invite further questions on clause 3. After they are exhausted we can come back to Mr. Moreau on another clause.

Mr. MOREAU: I have no further questions on residency.

Mr. LAMBERT: This is one of the areas which I wish to discuss. I am glad to see I have a convert to my point of view which I have expressed in other discussions in the last 18 months in connection with this introduction of the residency concept in some of my fiscal legislation. Here again I think the minister has not quite the courage of his convictions.

Mr. GORDON: Am I the convert or is Mr. Moreau?

Mr. LAMBERT: Mr. Moreau is the convert.

Mr. MOREAU: I am not a recent convert.

Mr. LAMBERT: In any event I find it a little difficult to accept the minister's statement that it is so much easier for the board of directors to determine whether a person is a resident or is not a resident and to leave it up to the board of directors to decide. Frankly, I would hate to be a corporation solicitor asked to advise a client with regard to the interpretation of the legislation that is now proposed in so far as residence is concerned. We only have to look at the Income Tax Act which contains this provision. I think this is as important in this act as it is in the Income Tax Act. One of the essential features of any law is its certainty, and frankly, the law as it is now drafted in this bill, in so far as residency requirements are concerned, is just a bag of woolliness, if I may say so, because what one board may decide to be ordinary residents, because they happen to want to get a particular shareholder, another board may deem not to be. One corporation solicitor may say yes to a case while the other may say no. To say the courts will decide is also not satisfactory because we know very well that the courts will not relinquish their discretion. What is the view of the superintendent of insurance? I would have preferred to see

the following wording in C of clause 6: "An individual who is not ordinarily resident in Canada for a period of 180 days in any calendar year." This is the spirit of the income tax. I can tell a client as a solicitor on what side of the fence he is—and that is why he comes. The client wants some certainty, and it is for that reason I feel there should be a greater degree of certainty in this legislation.

There is a further point you have made in this regard, that if a borderline case was taken and it took you up to 25.10 per cent of foreign ownership there might not be too great a disability. In my opinion, I say the superintendent of insurance has no discretion whatsoever to disregard that one tenth. This legislation says 25 per cent, and it does not allow him any discretion.

Mr. GORDON: I was not suggesting that the 25 per cent limit should be raised. I was saying that if it was the determination of the directors a particular case was borderline and was thrown into the resident basket on the discretion of the directors and only limited to one tenth of one percent it would not make it much different in substance.

Mr. LAMBERT: But there are the disabilities imposed as a result thereof, and I feel the superintendent's hands are bound by the legislation and he would have to take cognizance of that one tenth or slight excess.

Mr. GORDON: I could ask the superintendent of insurance to comment on that question.

Mr. LAMBERT: I want to continue first. The last point I want to deal with is in respect of 16(c) and 16(d) of this clause, the voting rights in excess of 10 per cent. I would like to have clarification in respect of whether or not the ownership of 10½ per cent is a disability to the entire owning.

Mr. GORDON: Yes.

Mr. LAMBERT: To the whole?

Mr. GORDON: Yes.

Mr. LAMBERT: Well, again I think we are getting into a situation where there is such scope for discretion—that is, an individual discretion in interpretation that it becomes entirely impossible to advise a man. If he is going to be a resident he can buy over 10 per cent and it does not affect him, but if there is a very hairline decision to be made in regard to his residence and the chips should fall the other way, then his total investment and the whole transaction is thrown out.

Mr. GORDON: Well,—

Mr. LAMBERT: Yes, because his investment carries with it certain rights, the voting rights, and a man investing 10 per cent or more in one of these companies surely to goodness wants to be able to exercise his voting rights. These are major holdings. And, if there is this uncertainty about his residence which consequently disentitles him to voting rights, then surely to goodness we must get this cleared up once and for all. Because he is in excess of 10 per cent do you disqualify him for the entire ownings? If he owns 9.99 per cent of the shares he would be entitled to vote capital but if he owns 10 per cent plus one one hundredth of one per cent he loses the entire amount. This, with the greatest respect, I cannot see.

Mr. GORDON: I could explain that point very easily. The point of this section of the bill is to prevent control of our financial institutions getting into the hands of non-residents. It would be very simple for a non-resident to acquire, first of all, just the 10 per cent and then to acquire another 80 per cent. Now, under your theory he would not have any right to vote.

Mr. LAMBERT: On the 80 per cent?

Mr. GORDON: We say on the 80 per cent, but under your theory he would not have any right to vote on more than 10 per cent, but that plus the other 70 per cent he could not vote on still would give him control.

Mr. LAMBERT: In essence, you still allow it.

Mr. GORDON: No, we do not.

Mr. LAMBERT: Well, you disallow it only as to voting rights behind nominee holdings. This is so. You do not invalidate nominee holdings but you disentitle them to voting rights. What is the difference?

Mr. HUMPHRYS: In respect of that last point, because there is no limit on the holdings by a resident whether he is holding for himself or is holding as nominee for a non-resident, it would be possible for a non-resident to buy 10 per cent in his own name and to buy all the rest of the shares in the name of a Canadian nominee. Then, if he was permitted to vote the 10 per cent in his own name but he was disentitled to vote the other shares he would have control of the company, and 10 per cent of the shares would give him complete voting power. The bill says that if a non-resident, directly or indirectly, owns more than 10 per cent of the shares he cannot vote. But, if a non-resident got himself in a position where he owned 10.1 per cent of the shares and then lost all his votes he could sell the .1 per cent and his voting power would be restored.

Mr. LAMBERT: Now, I am giving you fair warning that in respect of these provisions you are providing a field day for litigation.

Mr. HUMPHRYS: Also, I would say that the number of residents or non-residents who own more than 10 per cent of the shares of any of these companies is very few. Further, the phrase "ordinarily resident of Canada" is not a new phrase that has been thought up for this bill; it runs through the act already, and it runs through other corresponding acts. For example, there is already a provision that a majority of the directors of any of these companies must be ordinarily resident of Canada. There is already a provision that gives the directors of a life insurance company discretionary powers to refuse transfer of shares to persons not ordinarily resident of Canada. This phrase is in the Loan Companies Act, in the Trust Companies Act and in the Bank Act. As I say, it is not a new phrase; it is one that has been in the statutes for some time. With respect, I do not believe it would cause any great difficulty and trouble in this case.

Now, you raised the question of what would happen if the proportion of shares owned by non-residents goes over 25 per cent. There is no obligation on the superintendent to take any action in that respect. What the bill does is to say that the directors shall not permit a transfer in the defined circumstances; but, if in their opinion a man is a resident and they permit the transfer then it is valid, whatever the facts subsequently turn out to be; and the transferee, whether he is a resident or non-resident will have full voting rights, unless he owns more than 10 per cent. Then, if he is a non-resident, he would not have voting rights. But, he knows this. As I said, the number of cases would be very few. The worst that could happen to him is that he would not be able to vote and, if he wanted to, he could sell down to 10 per cent.

Mr. LAMBERT: I will accept that as your interpretation but with the greatest respect, I feel there are differences of opinion here, and I hope we are not merely opening a can of worms.

The CHAIRMAN: At this time I would like to remind members of the committee that we are going to proceed clause by clause. Have you a question in respect of this clause, Mr. Cameron?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I have a question on this clause. I was rather puzzled by the minister's statement that it would be possible for the directors of a company to determine whether or not a prospective

purchaser was a resident or non-resident, but it would be very difficult for them to determine whether or not he was a citizen. It seems to me this is an odd position to take. One is a matter of fact and the other, under this legislation, is a matter of opinion.

Mr. GORDON: He would have to file a birth certificate and that sort of thing. You know, it is not impossible to determine whether or not a man is a citizen. But, every time he would want to buy a share he would have to produce a birth certificate, if he had one, or he would have to produce his citizenship certificate, or whatever form it took.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would this be any more onerous on him than it would be for a non-citizen seeking to establish his right to be a resident? He also would presume his status was being investigated by the directorate and he would have to produce some proof of his resident qualifications. It seems more difficult than simply sending birth certificates.

Mr. GORDON: It is a matter of opinion. As the superintendent of insurance has stated, the phrase "ordinarily resident of Canada" is used all through these financial acts. We have had a lot of experience with it and it has not caused any trouble. When we considered the citizenship test we thought there would be a lot of red tape and difficulties with it.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In that connection can you or Mr. Humphrys tell me whether or not there have been court decisions in respect of this question of residency and non-residency, and have there been any precedents established?

Mr. HUMPHRYS: I am not aware of any.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): There is another point I have in mind upon which I would like clarification. I was not quite sure whether the minister was rejecting the idea of putting in the proposal of Mr. Moreau in respect of citizenship from the point of view of practicability of administration or the point of view of justice to people living in Canada but who are not citizens. I am in doubt in this respect because he mentioned he thought many non-citizens who had been residents of Canada and who have carefully preserved their previous citizenship status nevertheless have acquired a Canadian viewpoint. In my opinion, anyone who has acquired a Canadian viewpoint would almost be compelled to seek Canadian citizenship. Is your objection with regard to administration or from the point of view of justice toward those residents who are not citizens.

Mr. GORDON: There are two points of view and both are valid. I think if we had a citizenship test it would involve a great deal of administration work, and so I am against it on that ground. I myself had thought of a citizenship test until people pointed out that there are individuals in Canada who have lived here all their lives but they never got around to taking out their citizenship. I think it is too bad but it is their privilege, and we never have put any pressure on them in this country, as they have in the United States, to become citizens. Maybe this is something we all should think about when the Citizenship Act comes up for review. But I certainly would not want to reach a conclusion on that in this financial act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I somehow feel that Mr. Lambert's point really has not been answered with regard to the spot that this legislation is leaving not only Mr. Lambert in but also the directors of corporations, when there is no yardstick given to them which they can apply. I gather there have been no court decisions and, therefore, no precedents set which could be referred to, with the result that we are all in the dark. How are they going to advise their prospective purchasers in this regard? On what basis will they advise them?

Mr. GORDON: I never thought the day would come when I heard you take this solicitous view of companies' directors.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, I am a humanitarian and until I can abolish them I am going to see that they are not too badly treated.

Mr. GORDON: I would call that, if I may, a qualified kind of humanity.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes, very qualified. I am just facing the fact that so long as we have company directors they will have to be protected more or less and I do not think a proper job is being done in this connection, and they are going to face a serious problem.

Mr. GORDON: I must say this is an admission.

Mr. HUMPHRYS: On the question of citizenship, it would be a tighter test; it would involve a considerable further narrowing of the share market, considerable restriction of the share market within Canada; and unless that further tightening seems to be absolutely necessary to accomplish the purpose intended it would throw up a good many problems in the whole pattern of distribution of shares which could be avoided.

In respect of the problems which would face directors, I suggest that the number of borderline cases in fact, would be quite few. And, if there are only a few shareholders involved there would be little difficulty. Where a person purports to be ordinarily resident of Canada he would at least have to be living in Canada for some period of time, and I do not think it would be a great problem to the directors to make an assessment of whether he is living in Canada sufficiently long to be judged on any reasonable basis as ordinarily resident. Different boards of directors might apply different tests, but you would never get a case where they would judge a man ordinarily resident of Canada if he is not resident at all, or only comes one day a year. So, actually I believe that the number of problem cases would be quite few. In any event, it is not a feature; there is a penalty, a fine or tax involved. The worst that could happen would be he would not be able to buy a particular share of a particular company or he would be able to buy it; so there is not a great prize at stake or great penalty involved.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Both Mr. Humphrys and the minister have referred several times to borderline cases. I do not understand how you can have a definition of that if you do not know where the border is, and you have very carefully avoided telling us that.

Mr. GORDON: It is usually the 49th parallel.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): As I understand the purpose of this legislation—and, this is the thing I endorse—financial institutions should not fall into the hands of non-residents. But, I would say the term "all non-citizens" would be preferable because even in the case of non-residents I could see this legislation providing a great many loopholes. What are you going to do with an American who lives six months of the year in the United States and the other six months of the year in Canada? Is he a borderline case?

Mr. HUMPHRYS: My reference to borderline cases has been an attempt to answer questions that have suggested there would be difficulty in deciding in some cases, and it was in answer to those questions I was referring to the borderline cases.

Now, if a man lives six months of the year in Canada on a regular basis I think it is quite possible that someone might take the view he is ordinarily resident of Canada, and I would not see anything contrary to the spirit and intention of this act if he were so judged. You may also have a case where a person lives three months of the year in Canada and one month of the year in

several different countries; perhaps he is travelling. He may be a member of the government foreign staff but still ordinarily resident of Canada. He might be moving.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You say that in your view—and I am not holding that as a judgment—a man who lives ordinarily six months of the year in Canada may be regarded as a resident. But, if he is living the other six months of the year in the United States he quite easily could be regarded as an American resident.

Mr. HUMPHRYS: Surely.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): And, the question then arises which country is he ordinarily resident of?

Mr. HUMPHRYS: But, on the other hand, if an American was up here for a year on a temporary posting, and he and everyone else knew he was going back at the end of the year, no one would judge him within the intention of this act to be ordinarily resident of Canada. So, if you try to adopt a formula and say because he is here 180 days he is a resident of Canada you raise certain problems.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I realize that and that is why I am inclined to favour Mr. Moreau's suggestion.

The CHAIRMAN: Mr. Greene is next, followed by Mr. Otto, Mr. Gray and Mr. Gelber; and if Mr. Cameron is finished now I would ask Mr. Greene to put his questions.

Mr. GREENE: Might I suggest here, that the term "ordinarily resident of Canada" has appeared on our statute books, succession duties and so on, in order to act as a guideline. Now, as you said yourself, in the United States there are great pressures and, in fact, legislation, making citizenship compulsory. I think we have to start somewhere. You have been the champion of Canadianization from a fiscal standpoint. Should we not start going farther by gradually making citizenship a requirement in this country rather than using the ordinary resident criterion, which has been the case to date. And, if we do so throughout our statutes gradually the term "citizenship" will be the order of the day.

I think the problem at present is that there are no disadvantages to not having Canadian citizenship, except possibly the franchise, which may be a dubious privilege at times. As I say we have to start somewhere and I would suggest, with the greatest respect, that you, as the one who has championed Canadianization from a fiscal standpoint, should take it one step farther by making Canadian citizenship the test throughout all our statutory privileges and rights rather than "ordinary resident".

The CHAIRMAN: I think it is a rather broad question to go into all the statutes and to say that we should make "citizenship" the test in respect of all of them. With respect, may I say that we are dealing with this particular act and I think we should limit our scope. I am not objecting to references to other acts in the course of answers or questions. However, I think we are going far afield at this point and I think the term "citizenship" is being somewhat removed from the considerations at hand. I just pass on that caution from the Chair.

Mr. GREENE: May I say one other thing. I think there is a case for a Canadian citizen who is not ordinarily resident of Canada; we certainly have legislated against him here. As I said, I think we have to start somewhere making Canadian citizenship the test, and if the minister saw fit I think this might be one place where we could start without too great a difficulty being imposed on the business community. I understand Mr. Humphrys' point of view when he says that it does cause difficulty in respect of directors, but they are going to have some difficulty in any event in determining borderline cases.

And, this is the very place where it may not do a great deal of harm and perhaps we should consider this as a time when we should impose the test of citizenship rather than the test of ordinary resident as the Canadian criterion.

The CHAIRMAN: Mr. Otto is next.

Mr. OTTO: I have a few comments to make.

The CHAIRMAN: Are you finished, Mr. Greene?

Mr. GREENE: Yes.

The CHAIRMAN: Would you proceed, Mr. Otto?

Mr. OTTO: There have been several statements made in this committee in respect of citizenship. I am surprised at what two very learned gentlemen have said in this connection. As you know, a Canadian by birth retains his citizenship forever. But, if you are a naturalized citizen you can lose it by leaving the country for a certain period of time. In my opinion, we cannot use the term "citizenship" until the whole Canadian Citizenship Act is made more definite. A period of 180 days was mentioned in respect of the term "ordinarily resident" and surely with the jet age in which we are living we are not going to consider a firm time limit in obtaining residence. Mr. Humphrys mentioned that he was not aware of any cases. When you made that statement were you referring to this particular act?

Mr. HUMPHRYS: I said I was not aware of any case on his particular question of "ordinarily resident".

Mr. OTTO: The question of "ordinarily resident" has been decided in court on many occasions and the definition is fairly certain now.

Mr. HUMPHRYS: As I said, I am not aware of any case, Mr. Otto.

Mr. GRAY: I want to enlarge upon a point raised by Mr. Otto. I was speaking on the telephone when Mr. Lambert was speaking with regard to this topic and I do not know whether the point upon which I am going to speak was touched on at that time. But, I was surprised when I came back in to hear suggestions that the term "ordinarily resident" apparently had not been a matter of some judicial consideration. In my opinion, this term has been the subject of a great deal of judicial decision and interpretation.

Mr. GORDON: Well, I am in the hands of all you lawyers; you know the answers. It would be very unwise for me to answer that question. I suspect you are right.

Mr. GRAY: In view of that answer coming from a member of the accounting profession I presume he would agree that lawyers have had occasion to raise this question in courts and that decisions have been made with regard to it quite regularly.

I would like to ask the minister whether he feels that the test of citizenship alone really would not answer the problem of Canadianization because you may run into people who have Canadian citizenship or are Canadians by birth and then at some point in their lives they leave and spend the remainder of their lives in another country.

Mr. GORDON: I think the present definition is much more workable and more appropriate for this bill.

Mr. GRAY: I gather the aim of the legislation is to give these rights to those whose lives are linked with the country by being present in that country and taking part in its activities.

Mr. GORDON: That is correct.

The CHAIRMAN: Would you proceed, Mr. Gelber.

Mr. GELBER: I find this discussion a bit unreal. Are not the chief investors corporations? Would you not envisage foreign corporations as being likely purchasers of these shares rather than individuals who are non-residents of Canada?

Mr. GORDON: In the life insurance field I believe, in the main, the investors would be individuals but, if there were any takeovers, this might involve foreign corporations.

Mr. GELBER: That is what I was thinking of. I am thinking of those who bought control of Canadian life companies.

Mr. GORDON: You mean, foreign corporations.

Mr. GELBER: Yes.

So, the question of whether or not they are residents or non-residents is easy to determine.

Mr. GORDON: Yes.

Mr. GELBER: And the question of citizenship would not be relevant so far as a corporation is concerned?

Mr. GORDON: No, it is not relevant.

The CHAIRMAN: If there are no further questions on clause 3 the next one we stood was clause 5.

Mr. MOREAU: Are we going to carry clause 3?

The CHAIRMAN: Shall clause 3, as amended, carry?

Mr. LAMBERT: On division.

Clause 3 agreed to, on division.

On clause 5—*Municipal, etc., securities.*

The CHAIRMAN: Does any member wish to speak on this clause?

Mr. LAMBERT: The difficulties I have here are as follows: At whose discretion or in whose judgment will the earnings test be? If we look at page 10, line 7, it reads:

(ii) had earnings in each such year available for the payment of a dividend upon its common shares—

Mr. GORDON: What is your question?

Mr. LAMBERT: This concerns me. On a dollars and cents basis perhaps the money is available, but from a business point of view it would be sheer irresponsibility to declare the dividend. Does the superintendent of insurance, in the ultimate, have to be God?

Mr. GORDON: Yes, he does. That is part of his responsibility, and if his decision is objected to, there is an appeal to the exchequer court. I might point out that if he ruled that a particular common stock was not eligible under the earnings test, the insurance company could still buy it and include it in its assets under the basket clause.

Mr. LAMBERT: There is a little bit of an escape there, but I want to get this point clear because prior to this the superintendent of insurance did not have to do this since it was a factual event that the dividends had been paid. Now he has to say that they could have been paid regardless of the working capital provision of the company, and these are the factors that he has to take into account. We therefore know that it is ultimately the superintendent of insurance who decides.

Mr. GORDON: Subject to appeal.

Mr. LAMBERT: There again I am wondering whether the exchequer court will ever substitute its discretion for that of the superintendent, making thereby the appeal meaningless because the superintendent of insurance would have to be wrong on a point of law.

Mr. GORDON: That is right.

The CHAIRMAN: Will clause 5 as amended carry?

Clause agreed to.

On clause 6—*Power of life insurance company to invest in shares of insurance and real estate companies.*

The CHAIRMAN: This is a totally new clause.

Mr. LAMBERT: Clause 6 was stood because it was the parent clause of a related clause under the Trust Companies Act on which we received representations. What is the minister's view with regard to the representations made by the Trust Companies Association of Canada that they should be permitted the same powers that are granted under clause 64A, subclause (c), as appears in line 13 on page 14?

Mr. GORDON: I think my main reaction is that their request deals with hypothetical situations which may arise in the future. They have not arisen so far, and they are not real situations. Quite frankly, this proposal of the trust companies came late in the day, and I would like an opportunity to study it in greater detail and in more depth before deciding one way or the other. I do not think it would do any harm if it were not approved quickly here. Most of these proposals are considered by the superintendent over a period, sometimes, of several years, in association with the people concerned, before a decision is reached.

I think that in this particular case he will want to explore this particular proposal. This does not apply to all the suggestions of the trust companies but only to this particular proposal. I should like to have more time to see if there are any bugs in it which I do not see at a quick glance. If it develops that the trust companies might benefit from these proposals in some way or another, then that would be something that would be taken into account when the next revision of the act is undertaken. In the meantime I do not think anyone will be hurt because, as far as I know, this is just hypothetical.

Mr. LAMBERT: It is so to the extent that the trust companies say you wish to protect the life insurance companies. You are now granting the life insurance companies these particular extensions for investment so the trust companies ask you whether you do not think that they could have them also.

Mr. GORDON: I would just like to give you an example of the reason why I think this sort of thing should be considered more deeply before a decision is taken. The Royal Commission on Banking and Finance felt very strongly, or expressed strong views, that the so-called near banks, that means the trust companies amongst others, should be dealt with in the same way as banks, and subject, or to a degree, to the same kind of legislation as applies to banks. I might say that this proposal was reasonably popular with the banks which felt that the same sort of thing should apply. I have not noticed any great enthusiasm for this recommendation on the part of the trust companies, but I am not sure that until all aspects of these proposals have been very carefully dealt with—and I am sure they will be by this committee when the Bank Act comes up—we should make a move of this kind. This is what I mean by saying that this kind of proposal requires a lot of thought and a lot of careful consideration before the request is granted. I do not usually duck these things, but in this case I know of no trust company that is planning to do any other things than what they ask for power to do.

Mr. LAMBERT: I have one more question. Has Mr. Humphrys received the information for which I asked; that is, has the Department of Justice given him an opinion on whether trust companies and life insurance companies will be prohibited from making it a condition of investment that insurance be placed with this or that company or that it should be cancelled and placed with a nominee company?

Mr. HUMPHRYS: I have had an oral reply to my inquiry. The officers of the justice department told me that the question raised a good many difficult constitutional points, and they would require more time than seemed to be available within the scope of this committee to give a written reply. But they did say, on the basis of the review that they had made of the question in the time available, that they had very considerable doubt whether it would be within the power of parliament to impose such a condition. They thought that parliament had the power to grant corporate powers to companies and to prescribe conditions that had to do essentially with the exercise of those powers, but they thought that a condition such as the one you have in mind would move rather far in the direction of the terms of the contract and property and civil rights. They felt very considerable doubt whether it would be constitutional.

Mr. LAMBERT: As you know, there are some provinces that have these provisions. I have stated all my reasons for this.

Mr. OTTO: On clause 6, Mr. Gordon said that he was not quite clear why some insurance companies may want this clause.

Mr. GORDON: I spoke about trust companies, not insurance companies.

Mr. OTTO: This is something for the minister to watch, and especially for Mr. Humphrys to watch. Under (c) life insurance companies are given the power to own, control and lease land. Up to now what they have been doing is to buy equity, because as time goes on the equity improves. Up to now they have been purchasing the equity of these lands or properties from their own funds, that is their earned surplus. I wonder if this clause gives them now the power to buy the land and also mortgage the land under the 75 per cent mortgage, so that they can put down 25 per cent of the depositors' money, which would mean 100 per cent of the value of the land in respect of deposited money. I wonder whether this clause limits or prevents the insurance company from buying the equity and then mortgaging the redemption with two different funds.

Mr. HUMPHRYS: There would have to be a number of terms and conditions prescribed in any case where a life insurance company wished to own a real estate subsidiary. Among the terms and conditions that I would recommend that the treasury board should prescribe, would be conditions limiting the degree of investment that a company could put into a subsidiary of this type and the volume of funds that it could invest in a certain enterprise. I think it would clearly be improper to permit a company, through the ownership of a subsidiary, to indulge in investment activities that it could not do on a direct basis.

Mr. OTTO: In other words, if a company decided, under this section, to buy land for \$250,000 from the depositors' money and then mortgaged the building and the land for \$750,000, making it a million dollars, which may be 100 per cent coverage, do you anticipate a provision in the regulations prohibiting this?

Mr. HUMPHRYS: We would have to give careful consideration to the terms and conditions, and we would certainly want to make sure that a company did not invest to any extent in real estate property directly or indirectly in such a way as to circumvent any provisions in the legislation.

Mr. LAMBERT: I have a supplementary question on that. I would take it that in making those recommendations you would take into account the competitive position in which you would put Canadian insurance companies with their real estate subsidiaries vis-à-vis the real estate subsidiaries of foreign insurance companies who, we know, own very substantial pieces of Canadian real estate development, some of the choicest in the country. Foreign insurance companies are really getting part of the promotional icing on the cake.

Mr. HUMPHRYS: This of course is the basis of this provision.

The CHAIRMAN: Is clause 6 agreed to?

Clause agreed to.

On clause 11—*No power to form other companies.*

The CHAIRMAN: This was stood because it was consequential upon the passing of clause 6.

Clause agreed to.

On clause 13 as amended—*Municipal, etc., securities.*

Mr. HUMPHRYS: This relates to the assets that British companies may invest in trust. It is the counterpart of the investment provisions for Canadian companies.

Mr. LAMBERT: The trust companies wished to have an amendment to a clause which related to this one. They wanted an amendment to clause 31.

Mr. HUMPHRYS: This was in part 3 of the Bill.

Mr. LAMBERT: Yes, clause 31 is related to this one.

Mr. HUMPHRYS: They asked for certain amendments that would parallel those for insurance companies in clause 5, but that will come in part 3 when we deal with the trust companies.

The CHAIRMAN: Is clause 13 as amended agreed to?

Clause agreed to.

Clause 14 agreed to.

Mr. LAMBERT: Mr. Aiken was not able to be present but he made his point in this regard. On his behalf I would say that this clause be carried on division. I myself also have some reservations.

Mr. MOREAU: If Mr. Lambert himself wishes to go on division I think we could accept the explanation made.

Mr. LAMBERT: I will say on division.

The CHAIRMAN: It is probably too late for me to say, and it may be indiscreet for the Chairman to say, but the National House Builders Association advised me that they want me to put on the record that they approved of the raising of the limit of the mortgage to 75 per cent of the value, and I will put that into the record.

Is clause 15 agreed to?

Clauses 15, 16 and 17 agreed to.

On clause 19 as amended—*Municipal, etc., securities.*

The CHAIRMAN: The numbering may have caused some confusion. Clause 19 is a new clause that we put in.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I did raise some question on whether the term "philanthropic corporation" covered hospitals such as we have in British Columbia which are established by a hospital improvement association.

Mr. HUMPHRYS: I was advised by the Department of Justice that this term would cover hospitals.

The CHAIRMAN: Clause 19 as amended agreed to.

Mr. MOREAU: This would be clause 20.

The CHAIRMAN: It will become clause 20 as amended.

On clause 20 as amended—*Real estate mortgages*.

Mr. HUMPHRYS: This clause refers to foreign companies, and is parallel to the clause on British companies.

The CHAIRMAN: Clause 20 as amended agreed to.

On clause 29 as amended—*Definitions*. "*Corporation*." "*Non-resident*."

Mr. LAMBERT: Again I will agree to it on division, with reservations as to the feasibility of defining residents.

The CHAIRMAN: Clause 29 as amended agreed to on division.

On clause 30—*Contents of report*.

Mr. LAMBERT: I was wondering whether the minister considered the application, it now being late in the year and the auditors having now carried out the duty of their audits. In this clause they are going to be asked to sign a certificate for an operation which in effect was not carried out for this particular year. Perhaps somehow or other they could be given more notice.

Mr. GORDON: As an ex-auditor of trust companies I am quite sure that any auditor of a trust company would, in the course of his audit, do enough work so that with that knowledge he would be able to sign a certificate in the present form. However, this point has been raised by the trust companies, and if the members of the committees are willing I would have no objection to having this made effective as from next year.

The CHAIRMAN: The superintendent tells me he has an amendment with this principle in mind. Maybe the committee may agree to accepting it if it is in support of this amendment. This amendment would carry the spirit of the request made by the trust companies.

Mr. LLOYD: On this point I share the view of the minister. I think the very nature of trust company audits is such that I do not foresee any auditor having any difficulty in meeting the wording of this particular certificate.

Mr. GORDON: They have asked for it.

Mr. LLOYD: One more year would not do any harm.

Mr. GORDON: We have registered our professional purity in this matter.

The CHAIRMAN: It has been pointed out to me that the wording could be amended by substituting wording to the effect that this clause would come into force on the first day of January 1966. If that is accepted by the committee it would go in as the last clause in the act so as not to disturb our numbering.

Mr. HUMPHRYS: It should also refer to the corresponding clause in the part dealing with the loan companies.

The CHAIRMAN: It is moved by Mr. Macaluso and seconded by Mr. Lambert that a new clause 44 be inserted to provide that clauses 30 and 38 shall come into force on the first day of January 1966.

Motion agreed to.

Is this clause as amended agreed to?

Clause 30, as amended, agreed to.

On clause 31.

Mr. HUMPHRYS: Clause 31 deals with investment in mortgages by trust companies. The Trust Company Association submitted representations and wished to have the power to make mortgage loans on lease loan properties as well as freehold properties.

The CHAIRMAN: I have the duty, gentlemen, to bring that to your attention. I told the trust companies we would bring it to your attention.

Mr. GORDON: I already made a comment about the relative views of the banks, insurance companies and trust companies, and I am not sure I would be happy if we did do this at this time.

The CHAIRMAN: Is clause 31 agreed to?

Clause agreed to.

On clause 32.

Mr. HUMPHRYS: The trust companies had further representations about some amendments dealing with investments.

The CHAIRMAN: I draw that to your attention.

Clause, as amended, agreed to.

On clause 33—*Limitation of amount.*

Mr. LAMBERT: Mr. Chairman, this is the clause which was related to clause 40. It deals with the trust companies. I have noted what the minister has said. It is unfortunate we did not have the transcript of what Mr. Finlayson and his associate had to say and the replies that Mr. Humphrys gave because quite a question of principle is involved here. I may say that while I agree that all this pyramiding should not be possible, yet my interpretation is that there cannot be continuous pyramiding because a trust company cannot own a loan company, and therefore it stops there, whereas we permit a loan company to own a trust company. We therefore cannot pile one on top of another.

Mr. GORDON: The loan company comes on top and the trust company below. Why cannot another loan company come on top?

Mr. LAMBERT: That cannot be done either. The Loan Companies Act does not allow one loan company to own another. With the greatest respect, may I say that I find it rather hard, under the present circumstances, to agree. We are going to kill the World Mortgage Corporation in essence. Oh, I know, you are going to give them a little bit of string. I was not able to attend the latter portion of Mr. Humphrys' and Mr. Finlayson's presentation owing to a call to another committee, but, unless some changes have been made which I have not seen I am wondering frankly whether you are not using an elephant gun to kill a mosquito. I know what you are trying to get at but it seems to me it is too drastic a provision for this purpose. I think the counsel for the World Mortgage Corporation was quite fair in saying that the superintendent and the treasury board had ample power to deal with this sort of thing. They have discretionary powers to prevent pyramiding. After all, I think there is no business in this country that is subject to more control, and to more paternal control, than the mortgage and trust company business which comes under the superintendent of insurance. I am not talking about trust companies operating under provincial charters. Now the provision requiring approval of the treasury board prevents the sort of pyramiding of which we are so afraid. Let me say, with the greatest respect, that to say that the value of the shares of the Eastern and Chartered Trust Companies, which is a separate body, could not come under the investment base of the World Mortgage Corporation is to me absolutely ludicrous.

Mr. HUMPHRYS: I would say first on the point of the power to control the pyramiding, that the purpose of this amendment is to control pyramiding, so that it seems to me there should be no objection to putting it into the legislation. It is better to do it through legislation, if the principle is sound, than to leave it to discretion. Secondly, I do not think the enactment of this provision would necessarily kill World Mortgage. They may decide not to go ahead because they would not have the same leverage that they would if such a consolidation provision were not adopted, but they could still operate as a loan company.

We have had several loan companies incorporated in the recent years and none of them have had a paid capital of more than \$3 million, so that paying in the \$2,750,000 that they speak about is quite respectable in the light of what other loan companies are doing. I will admit that if the World Mortgage were held at a borrowing limit of four times, then it would prevent them from borrowing at all. But I do not think anyone expects a company such as that to stay at a borrowing limit of four times.

Mr. LAMBERT: I am sorry, but I think you are knocking right on the head something which is a perfectly justifiable proposition.

Mr. MOREAU: It seems to me, Mr. Chairman, that Mr. Lambert while accepting the principle is now wanting us to legislate in a particular way for this particular situation of World Mortgage Corporation and it seems to me we should not be put in that position.

Mr. LAMBERT: I want to make myself abundantly clear. I think the language of the amendment is far too sweeping. There are antipyramiding provisions available to the superintendent of insurance without this.

Mr. GREENE: There is one point I would like you to clear up. I also had to miss a part of what was being discussed this morning. First of all, I was somewhat disturbed by the fact that apparently there is one corporation already doing exactly what this section prevents. I am thinking of Canada Permanent. By our legislation here are we putting that company in a favourable position and are they able to do exactly what we are now preventing others from doing, to the detriment of other companies?

Mr. HUMPHRYS: There are two examples of parent-subsidiary relationships in the federal loan and trust fields, and as the law now stands these two companies would have the power to expand their borrowing limits by using the shares of one company as a borrowing base in the other; but, as a matter of fact, they have not made use of the additional borrowing capacity that exists in that way. The enactment of this amendment would put them under the same borrowing limitations as would apply to any other company, so they would be in exactly the same position. They would have no special privileges.

Mr. GREENE: You are not afraid that this section will force this type of company into the provincial field where they could acquire broader powers?

Mr. HUMPHRYS: Provincial companies cannot own subsidiaries, at least not in Ontario. In Quebec they have broader powers.

The CHAIRMAN: Have you a question, Mr. Lloyd.

Mr. LLOYD: My question has been answered Mr. Chairman.

The CHAIRMAN: Does clause 33, as amended, carry?

Mr. LAMBERT: On my recorded division.

Clause agreed to, on division.

The CHAIRMAN: Clause 37 on page 45 is next.

On clause 37—*Definitions*.

Mr. OTTO: This is the first occasion I have had to ask the minister the reason for the great emphasis on control. Now, presuming that we are talking about Americans as foreigners we all know that American businessmen have been more venturesome, more daring and have shown more foresight than Canadians have. If we presume it does not matter who is in control of a company, is not the purpose to make money in accordance with the rules and safety precautions taken? Why is such emphasis put on control? What would be wrong with a Canadian company controlled by foreigners who are good business people provided the shares and dividends are left in Canada? Is your concern not really the dividends? Why is such emphasis put on control?

The CHAIRMAN: Are you directing your remarks to the companies under this act?

Mr. OTTO: Yes, under 51A, limit on shares held by non-residents.

Mr. GORDON: I suppose from a philosophic standpoint there are some people—and certainly I am included in them—who believe that the financial institutions of a country should be, for the most part anyway, in the hands and control of people who live here. These institutions have the privilege of accumulating and acquiring in a very substantial proportion all the savings of the Canadian people. These savings are invested by the directors and the management of these companies. There are some people who are completely international in their outlook. These people do not think it matters who controls these institutions. But, there are others who think that as long as a country is striving to remain independent that the people who invest the savings of the citizens should be people who reside in that country.

Now, you ask me if I could prove this one way or another; of course, I cannot, because this sort of thing does not lend itself to empirical proof. But, I have talked with many people in many countries who, while they are not prepared to agree that it makes any difference whether our great resource industries are controlled by Canadians—and I am talking about Americans in this connection—do agree with me completely that any country which allows its financial institutions to fall into the hands of those who do not live there is risking something and is giving up some measure of local independence, if you like. Now, this is the purpose of this bill; this is the purpose of the corresponding sections under the insurance and trust company sections of the act, and it was one of the major points of principle that were approved by the house at the resolution stage and certainly on second reading. I do not think that I could help very much except by these general remarks. I do not suppose you think it proper for me to repeat what was said on second reading. But, I have not very much more to add.

Mr. OTTO: You have answered very well, Mr. Gordon. But, there always has been a presumption that business acts for the sake of business, and that the prime purpose of the directors or those managing loan companies and so on, is to make money. They are not influenced by politics, nationality and so on. I am wondering why you are placing such great emphasis on control rather than on shares. For instance, I can think of several cases where I would have loved to have had an American director control one of my companies because I think he would have made me a lot of money, and as long as I got the money what would be wrong with that? But, they did not want to do that.

Mr. GORDON: Well, in answer to that I can only say that I do not know many enterprising Americans who would be prepared to invest in one of your companies and let you make the money.

Mr. OTTO: Then that is really what you are concerned about; you are really concerned about the dividends?

The CHAIRMAN: Does clause 37 carry? Mr. Lambert has stated his position and, I presume, it is on division.

Mr. LAMBERT: Yes, on division.

Clause 37 agreed to, on division.

On clause 38—*Contents of report.*

Mr. LAMBERT: That is the clause which is subject to the amendment we made to clause 31.

The CHAIRMAN: Yes, as amended. This was included.

Clause agreed to.

On clause 39—*Common shares.*

The CHAIRMAN: Does clause 39 carry?

Mr. LAMBERT: On division.

Clause agreed to on division.

On clause 40—*Limitation of borrowing powers.*

The CHAIRMAN: We have to deal with a further amendment on clause 40, and this was in connection with the World Mortgage Corporation. This amendment was moved and we have to deal with a new subclause 4 to be added. This is the new subclause:

Notwithstanding anything contained in subsection (3) of this section, if the shares of the trust company acquired by the loan company are listed on a recognized stock exchange in Canada and have been acquired for valuable consideration the provisions of subsection (3) of this section shall not apply.

That amendment was moved and seconded, and I am now ready to call it. Shall this proposed amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. LAMBERT: I wanted to ask the minister if there is any particular significance to that figure of 10 per cent, or is it deemed 10 per cent or less is insignificant?

Mr. GORDON: That is right; it would not be enough to control.

Clause agreed to.

The CHAIRMAN: We have a new clause 41 that was introduced the last time. I will have Mr. Humphrys refresh your memory in this respect.

Mr. HUMPHRYS: This clause would enable a loan company to own a trust company as a subsidiary subject to conditions to be prescribed by the treasury board, so it would give general power for loan companies to own subsidiaries.

The CHAIRMAN: Having refreshed your memory are you ready for the question?

Mr. LAMBERT: That of course, also would be subject to the limitations on clause 40 that we put in.

Mr. HUMPHRYS: Yes. There is a case before parliament now that constitutes an exception from the rule that a loan company may not own more than 30 per cent of the shares of another company. If that is granted it is considered the exception should be considered on a general basis, and the power might be granted generally to loan companies to own subsidiary trust companies subject to such conditions as may be prescribed by treasury board, having in mind there are two examples now in existence of another under consideration.

Mr. LAMBERT: One being World Mortgage Corporation?

Mr. HUMPHRYS: Yes.

Clause 41 agreed to.

The CHAIRMAN: Now, I have to have a motion to renumber the present clauses 40 and 41 to read clauses 42 and 43 respectively.

Mr. MOREAU: I so move.

Mr. OTTO: I second the motion.

Motion agreed to.

Title agreed to.

Mr. GELBER: Were we not going to put in an additional clause?

The CHAIRMAN: We did that some time ago, although it may have been slightly out of order to do it at that time.

Shall the bill, as amended, carry?

Agreed to.

The CHAIRMAN: Shall I report the bill, as amended?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Now, I have to have a motion to reprint the bill.

Mr. MOREAU: I so move.

Mr. MACALUSO: I second the motion.

The CHAIRMAN: It has been moved and seconded that the bill be reprinted. All those in favour? All those opposed?

Motion agreed to.

The CHAIRMAN: I think the minister would like to say a word at this time.

Mr. GORDON: I just want to thank the committee for the time and attention they have given to this bill. This is a difficult bill and an important one, in my opinion, and I want to assure you that there will be more to come. I hope the resolution on the Bank Act will be on the order paper today. I can assure you it will engage your attention and interest as well as your time. This revision happens only once every ten years and there are lots of important points in it.

Mr. LAMBERT: I have a suggestion to make to the Minister of Finance. In view of the fact that the pension committee is going to be sitting for a very considerable time and if we are to proceed with a study of the Bank Act at this time I think you should suggest that the House of Commons recess for the next nine months.

The CHAIRMAN: I would like to thank the minister for his remarks and I hope that the spirit which has prevailed in this committee when differences of opinion have arisen will carry over into the house.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964

CANADA.

STANDING COMMITTEE
ON
BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

Minutes of PROCEEDINGS and evidence...

No. 14

(TUESDAY, DECEMBER 8, 1964)

Respecting

(Bill C-123, An Act to amend certain Acts administered
in the Department of Insurance.)

(INCLUDING NINTH REPORT TO THE HOUSE)

(ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964)

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Grafftey	Mullally
Armstrong	Gray	Munro
Asselin (<i>Notre-Dame-de-Grâce</i>)	Grégoire	Nowlan
Basford	Greene	Nugent
Bell	Habel	Otto
Blouin	Hales	Pascoe
Cameron (<i>High Park</i>)	Jones (Mrs.)	Rynard
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Kindt	Scott
Caouette	Klein	Skoreyko
Chrétien	Lambert	Tardif
Côté (<i>Chicoutimi</i>)	Leblanc	Thomas
Douglas	Lloyd	Vincent
Frenette	Macaluso	Wahn
Flemming (<i>Victoria-Carleton</i>)	Mackasey	Watson (<i>Châteauguay-Huntingdon-Laprairie</i>)
Gelber	McCutcheon	Woolliams—50.
	McNulty	
	More	
	Moreau	

Dorothy F. Ballantine,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, October 15, 1964.

Ordered,—That Bill C-123, An Act to amend certain Acts administered in the Department of Insurance be referred to the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

REPORT TO THE HOUSE

DECEMBER 8, 1964.

The Standing Committee on Banking and Commerce has the honour to present its

NINTH REPORT

Your Committee has considered Bill C-123, An Act to amend certain Acts administered in the Department of Insurance, and has agreed to report it with the following amendments:

Clause 2

Amend sub-clause 2 by striking out line 9 on page 2 and by substituting therefor the following:

"and has, subject to section 45, one vote for each share held by him subject"

Clause 3

Amend as follows:

(a) by striking out lines 3 to 9 on page 7 and by substituting therefor the following:

"long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 16D does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 16C and 16D, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection (2) of section 16C, allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.";

(b) by renumbering subsections (4) to (6) of section 16F on page 7 as subsections (6) to (8) respectively; and

(c) by striking out line 33 on page 7 and by substituting therefor the following:

"section (7) of this section.

(9) In determining for the purposes of sections 16B to 16F whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 16E or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge."

Clause 4

Amend by striking out lines 34 to 36 inclusive on page 7 and by substituting therefor the following:

"4. (1) Section 45 of the said Act is repealed and the following substituted therefor:

"45. (1) Notwithstanding anything contained in its Act of incorporation or in this Act, if the subscribed stock of a company if fully paid, the company may, by a by-law made by the directors and confirmed by at least two-thirds of the votes cast at a general meeting of the shareholders duly called for considering the by-law, divide the capital stock of the company into shares of *one dollar* each or any multiple thereof but not exceeding one hundred dollars each.

(2) Where pursuant to subsection (1) the capital stock of a company registered to transact the business of life insurance is divided into shares the par value of which is less than five dollars each, a holder of the shares shall have as a shareholder of the company only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five."

(2) The said Act is further amended by adding thereto, immediately after section 45A thereof, the following section:"

Clause 5

Amend sub-clause 1 by striking out lines 42 to 44 inclusive on page 8 and by substituting therefor the following:

"under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 6 by striking out line 13 on page 11 and by substituting therefor the following:

"or of a province, state or municipality of that"

Clause 13

Amend sub-clause 1 by striking out lines 8 to 10 inclusive on page 18 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 8 by striking out line 14 on page 21 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

New Clause 19

Immediately after the headings "Part II" and "Foreign Insurance Companies Act" on page 24, insert a new clause 19, as follows:

"19. Subsection (6) of section 37 of the *Foreign Insurance Companies Act* is repealed and the following substituted therefor:

"(6) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (5), the assets of the fund so maintained shall be available only to meet the liabilities arising under policies in respect of which such fund is maintained, *except that amounts transferred to the separate and distinct fund from other funds of the company may, subject to the approval of the Superintendent, be withdrawn from the separate and distinct fund and transferred to such other funds as the directors may determine.*"

Original Clause 19

Amend by renumbering as clause 20, and strike out lines 35 to 37 on page 24 and substitute the following:

"20. (1) Paragraph (b) of section 1 of Schedule I to the said Act is repealed and the following substituted therefor:"

Amend sub-clause 1 by striking out lines 5 to 7 inclusive on page 25 and by substituting therefor the following:

"levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes;"

Amend sub-clause 8 by striking out line 46 on page 27 and by substituting therefor the following:

"government or a municipality in Canada or any agency thereof, or"

Clauses 20 to 39 inclusive

Amend by renumbering as clauses 21 to 40 respectively.

Original Clause 29

Amend as follows:

(a) by striking out lines 45 to 47 on page 37 and by substituting therefor the following:

"be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 36C does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of

the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 36B and 36C, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 36B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

(b) by renumbering subsections (4) to (6) of section 36E on page 38 as subsections (6) to (8) respectively; and

(c) by striking out line 28 on page 38 and by substituting therefor the following:

“section (7) of this section.

(9) In determining for the purposes of sections 36A to 36E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 36D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

Original clause 37

Amend as follows:

(a) by striking out lines 45 to 48 on page 49 and lines 1 to 3 on page 50 and by substituting therefor the following:

“the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 51C does not apply.

(4) Where after the coming into force of this section a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 51B and 51C, to be shares held by a resident for the use or benefit of a non-resident.

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection (2) of section 51B, allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.”;

(b) by renumbering subsections (4) to (6) of section 51E on page 50 as subsections (6) to (8) respectively; and

(c) by striking out line 27 on page 50 and by substituting therefor the following:

“section (7) of this section.

(9) In determining for the purposes of sections 51A to 51E whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 51D or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.”

New Clause 41

Immediately after line 24 on page 52, insert a new clause 41, as follows:

“41. The said Act is further amended by adding thereto, immediately after section 61 thereof, the following section:

“61A. (1) Notwithstanding anything in section 60 but subject to subsection (2) of this section and to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent, a loan company may invest its funds in the fully paid shares of a trust company to which the *Trust Companies Act* applies.

(2) No investment shall be made by a loan company under subsection (1) if, after the making of such investment, the aggregate cost to the loan company of the investments made under subsection (1) and the investments made under section 60 in shares of such trust companies then held by the loan company would exceed the aggregate of the loan company's then paid-up capital and reserve.”

Original Clauses 40 and 41

Amend by renumbering as clauses 42 and 43 respectively.

New Clause 44

Immediately after the renumbered clause 43, insert a new clause 44, as follows:

“44. Sections 31 and 39 shall come into force on the 1st day of January, 1966.”

Your Committee has ordered a reprint of the Bill, as amended.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issues Nos. 5 to 13 inclusive) is appended.

Respectfully submitted,
LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS*

THURSDAY, November 26, 1964.

(19)

The Standing Committee on Banking and Commerce met at 10.20 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Asselin (*Notre-Dame-de-Grâce*), Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gendron, Gray, Greene, Habel, Klein, Lambert, Lloyd, Macaluso, Moreau, Mullally, Otto, Pennell, Skoreyko and Thomas—18.

In attendance: The Hon. Walter Gordon, Minister of Finance; Mr. R. Humphrys, Superintendent of Insurance.

The Committee resumed consideration of Bill C-123, An Act to amend certain Acts administered in the Department of Insurance.

The Chairman welcomed the Minister and invited him to make a statement.

The Minister made a statement dealing with some of the questions raised during earlier proceedings and said he was prepared to answer any additional questions.

The Committee then resumed consideration of the clauses which had been allowed to stand.

On Clause 3

The Minister was questioned, and was assisted by Mr. Humphrys in answering questions.

Clause 3, as amended, was carried, on division.

On Clause 5

The Minister was questioned and the clause, as amended, was carried.

On Clause 6

The Minister was questioned and was assisted by Mr. Humphrys. The clause was carried.

Clause 11 was carried.

Clause 13 was carried, as amended.

Clause 14 was carried, on division.

Clauses 15, 16 and 17 were carried.

Clauses 19 and 20, as severally amended, were carried.

Clause 29, as amended, was carried, on division.

Clauses 30, 31 and 32, as severally amended, were carried.

On Clause 33

Mr. Humphrys was questioned and the clause, as amended, was carried, on division.

*Also published in Issue No. 13.

On Clause 37

The Minister was questioned and the clause, as amended, was carried, on division.

Clause 38, as amended, was carried.

Clause 39, as amended, was carried, on division.

On motion of Mr. Moreau, seconded by Mr. Otto,

Resolved,—That the present clauses 40 and 41 be amended by renumbering as clauses 42 and 43, respectively.

On Clause 40

The Chairman reminded the Committee that at the last meeting an amendment requested by the World Mortgage Corporation had been moved by Mr. Mackasey and seconded by Mr. Scott, for purposes of putting it on the record, and had been allowed to stand.

And the question having been put on the proposed amendment of Mr. Mackasey, it was negatived on the following division: Yeas, 2; Nays, 7.

Clause 40, as amended by renumbering, was carried.

Clause 41, as amended by renumbering, was carried.

The Chairman then put the question on the motion of Mr. Moreau for further amendment of the Bill by insertion of a new Clause 41, which had been allowed to stand, and the amendment was carried.

On motion of Mr. Macaluso, seconded by Mr. Lambert,

Resolved,—That a new Clause 44 be inserted immediately after the renumbered Clause 43 as follows:

“44. Sections 31 and 39 shall come into force on the 1st day of January 1966.”

The Title was carried.

The Bill, as amended, was carried, on division.

The Chairman was directed to report the Bill, as amended.

On motion of Mr. Moreau, seconded by Mr. Macaluso,

Ordered,—That the Bill, as amended by the Committee, be reprinted.

At 12.05 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964-65

STANDING COMMITTEE

ON

ANADA.

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

(FRIDAY, FEBRUARY 26, 1965)

Respecting

(Bill S-22, An Act to amend the Companies Act.)

WITNESS:

(Mr. Louis Lesage, Q.C., Companies and Corporations Branch, Department
of the Secretary of State.)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Grafftey	More
Armstrong	Gray	Moreau
Asselin (<i>Notre-Dame- de-Grâce</i>)	Grégoire	Mullally
Basford	Greene	Nowlan
Bell	Habel	Nugent
Blouin	Hales	Otto
Cameron (<i>High Park</i>)	Jones (Mrs.)	Pascoe
Cameron (<i>Nanaimo- Cowichan-The Islands</i>)	Kelly	Rynard
Caouette	Kindt	Scott
Chrétien	Klein	Skoreyko
Côté (<i>Chicoutimi</i>)	Lambert	Tardif
Douglas	Leblanc	Thomas
Frenette	Lloyd	Vincent
Flemming (<i>Victoria- Carleton</i>)	Macaluso	Wahn
Gelber	Mackasey	Watson (<i>Châteauguay- Huntingdon-Laprairie</i>)
	McCutcheon	Woolliams—50.
	McNulty	

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, December 9, 1964.

Ordered,—That the name of Mr. Kelly be substituted for that of Mr. Munro on the Standing Committee on Banking and Commerce.

THURSDAY, February 18, 1965.

Ordered,—That Bill S-46, An Act to incorporate Settlers Savings and Mortgage Corporation be referred to the Standing Committee on Banking and Commerce.

FRIDAY, February 19, 1965.

Ordered,—That Bill S-22, An Act to amend the Companies Act be referred to the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, February 26, 1965.

(20)

The Standing Committee on Banking and Commerce met at 9.20 a.m. this day. The Acting Chairman, Mr. Gelber, presided at the opening of the meeting; later the Chairman, Mr. Pennell, took the Chair.

Members present: Messrs. Basford, Chrétien, Côté (*Chicoutimi*), Gelber, Greene, Habel, Kindt, Klein, Lambert, Lloyd, Moreau, Mullally, Pennell, Wahn—(14).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

In view of the unavoidable absence of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman. On motion of Mr. Greene, seconded by Mr. Lambert, it was

Resolved,—That Mr. Gelber take the Chair as Acting Chairman.

The Acting Chairman thereupon took the Chair.

The Acting Chairman presented the *Fourth report of the Sub-Committee on Agenda and Procedure*, dated February 24, 1965, which recommended as follows:

- (a) That the Committee meet on Friday, February 26, at 9.00 a.m. to consider Bill S-22, An Act to amend the Companies Act, and to hear a statement from Mr. Louis Lesage, Director, Companies and Corporations Branch, Department of the Secretary of State;
- (b) That the Committee meet at 9.00 a.m. on Tuesday, March 2nd to consider Bill S-46, An Act to incorporate Settlers Savings and Mortgage Corporation, and to resume consideration of Bill S-22.

On motion of Mr. Moreau, seconded by Mr. Habel, the report was approved. The Committee then proceeded to consideration of Bill S-22, An Act to amend the Companies Act.

On Clause 1

The Acting Chairman introduced the witness, Mr. Lesage, who made a brief statement on the general purpose of the Bill, and who then gave more specific explanations of Clauses 1 to 11.

During the meeting, the Chairman, Mr. Pennell, took the Chair.

The witness tabled a number of amendments which his Department wished to have included in the Bill, and the Clerk was directed to have these mimeographed and distributed to the members before the next meeting.

At 11.00 a.m. the Committee adjourned until Tuesday, March 2, 1965 at 9.00 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, February 26, 1965.

Note—The evidence, adduced in French and translated into English, printed in this issue, was recorded by an electronic apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.

The CLERK OF THE COMMITTEE: Gentlemen, you have a quorum, but the Chairman and Vice Chairman are unavoidably detained.

I will ask for nominations for acting chairman.

Mr. KLEIN: I move that Mr. Moreau be acting chairman.

Mr. LAMBERT: I second the motion.

Mr. MOREAU: I have another meeting and will have to leave at 10 o'clock.

Mr. LAMBERT: Either Mr. Gelber or Mr. Greene would be satisfactory to me.

Mr. GREENE: I also have to leave at 10 o'clock. Mr. Gelber is a financier and I would move he be made acting chairman.

Mr. LAMBERT: I second the motion.

Motion agreed to.

The ACTING CHAIRMAN (*Mr. Gelber*): Gentlemen, I will call the meeting to order.

I will read to you the report of the subcommittee on agenda and procedure, which met on Wednesday, February 24, 1965, and agreed to recommend as follows:

- (a) That the committee meet on Friday, February 26, at 9.00 a.m. to consider Bill No S-22, an act to amend the Companies Act, and to hear a statement from Mr. Louis Lesage, director, Companies and Corporations Branch, Department of the Secretary of State;
- (b) That the committee meet at 9.00 a.m. on Tuesday, March 2nd to consider Bill No S-46, an act to incorporate Settlers Savings and Mortgage Corporation, and to resume consideration of Bill No S-22.

Is there any discussion on this report?

Mr. MOREAU: Mr. Chairman, I should explain the reason for the switch on Tuesday. There will be some applicants from western Canada at that time and that is why we decided to take the private Bill No S-46, before we proceeded with Bill No. S-22.

Mr. Chairman, I move the report be adopted.

Mr. BASFORD: I second the motion.

Motion agreed to.

The ACTING CHAIRMAN (*Mr. Gelber*): Gentlemen, we have Bill No. S-22, to amend the Companies Act. Mr. Lesage is available to give evidence this morning.

Preamble agreed to.

On clause 1.

The ACTING CHAIRMAN (Mr. Gelber): Will you proceed now, Mr. Lesage. cedure, which met on Wednesday, February 24, 1965, and agreed to recommend

Mr. LOUIS LESAGE Q.C., (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Mr. Chairman and gentlemen, there have been no amendments to the Companies Act for 30 years. The last revision of the act was in 1934 and, a year later, in 1935, some minor amendments were made to the act. Since that time the department has administered the act without further amendments. Of course, during that period of 30 years the department received many suggestions for amendments to the Companies Act but, due to circumstances it was not until one and a half years ago that the department was prepared to give to the government a list of proposed amendments.

An interdepartmental committee was established and three outside practising lawyers were invited to sit with the departmental officials from various departments to consider the bill.

In December, 1963, we discussed and studied this matter for a period of five days, after which the recommendations of the committee were handed to the Department of Justice, which had representatives at all times in attendance at that meeting. They prepared the first draft of Bill No. S-22.

Mr. BASFORD: Mr. Lesage, who were the three outside lawyers?

Mr. LESAGE: Mr. Cudney, now of Winnipeg. I do not recall the name of his firm but, previously, he was assistant provincial secretary of Ontario. There was Mr. Gordon Blair from the Tolmie firm in Ottawa, and Mr. Laurent Belanger from Montreal.

Thereafter, the bill was introduced in the Senate. But, may I say that the committee's terms of reference were, to a certain extent, limited, in that only procedural amendments were to be considered. This is what brought Bill No. S-22 before the Senate on Thursday, May 7, 1964.

Before the bill was referred to the Senate banking and commerce committee the government leader in the Senate, on second reading, indicated a wish of the government for the Senate to go deeper into their study of Bill No. S-22, and even the Companies Act. The banking and commerce committee of the Senate was invited to amend not only the bill but also the Companies Act, if it wished to do so. As a matter of fact, this accounts for many differences between Bill No. S-22, as it was introduced in the Senate, and the one which now is before your committee this morning.

I must say that some very good amendments were made by the Senate in producing the present bill in its present form.

In order that you may have a full picture of how the bill was prepared I should tell you that in the Senate banking and commerce committee invitations were tendered to interested major associations in Canada. Also, full consideration was given to representations received from many law firms. I have a list here of those associations who appeared before the Senate committee and presented briefs. They are: The Canadian Bar Association; The Canadian Institute for Chartered Accountants; the Canadian Manufacturers Association, and the Metropolitan Toronto Board of Trade. We also had representations from the following law firms: Osler, Hoskins & Harcourt; O'Brien, Home, Hall; Campney, Owen & Murphy; Campbell, Godfrey & Lewtas, and Blake, Cassels & Graydon. We also received correspondence from those who submitted briefs, which was given serious study. During the last 30 years the department has kept all recommendations received concerning the Companies Act in a separate file. The Senate invited the comments and suggestions of everyone in this country, and I can assure you that all those suggestions and recommendations were given consideration.

The Senate banking and commerce committee also set up a subcommittee, which sat behind closed doors. I was invited to attend their meetings and I gave evidence. The hon. Senators worked on this bill in that committee. They were not only working on it section by section they worked on it word by word and even comma by comma. They made a thorough study of the whole matter.

Then the bill was passed by the Senate on November 25, in the form in which you have it now. In the last three months, the department has received further suggestions, which were very constructive. These suggestions came from different parts of the country. Let us say that we had a suggestion from Toronto; the same one came from Winnipeg. In another instance, we had a suggestion from Montreal, and we received the same suggestion from Toronto. These suggestions, which were few in number, were studied.

We have to offer, for your consideration, four amendments, three of which are of a very minor nature. One is with regard to clarification of interpretation of something which has been introduced by the Senate. Another is a mere correction of a clerical error. There is only one which would appear to be of a more important nature, namely the broadening of the definition of mutual fund companies. When we come to that particular section in the bill I will explain to you the reasons for the broadening of that definition of mutual fund companies.

I think I have given you a very brief history of the bill which is now before you gentlemen, and perhaps I may add two or three comments on the nature of the Companies Act itself so that no one will be misled as to its importance.

MR. LAMBERT: Mr. Chairman, before Mr. Lesage does that and we get into this particular bill would he advise us to what extent consideration was given to any of the deliberations and recommendations of the committee on the uniform companies act.

MR. LESAGE: I will do that. The uniform companies act was among the documents which were compiled for study in the Senate. Of course, in the interdepartmental committee this formed a basis of discussion, together with the Ontario act which, at that time, was the latest statute in Canada on corporate law. I understand the Ontario act has a very good reputation and the draft uniform act is also a most valuable document. No amendments were considered without going to both the draft uniform act and the Ontario act. The main reason both the interdepartmental committee and the Senate referred to the uniform companies act was to make sure that our federal act would not depart from the principles which may be accepted across the country by other jurisdictions, and to avoid departing from the principles adopted in other jurisdictions.

As a matter of fact, a very few months ago the province of Manitoba also made revisions to its Companies Act and, to a large extent, they followed the principles of the draft uniform act. But, neither the province of Manitoba, the Senate, nor the interdepartmental committee took the draft as is. As a matter of fact, the terms of reference to both were not to prepare a complete revision of the Companies Act because it was considered, and it is still considered, to be a too heavy responsibility for the department. And because of the administrative duties it could not be prepared within a short period of time. But in many fields there was some urgency for amendments, particularly after a period of 30 years. That speaks for itself. I can assure the hon. members of this committee that the draft uniform act was respected. Many good ideas were borrowed from the Ontario act. We even went to other legislation. In one instance we followed Quebec. In another instance, we went to the New York legislation. We endeavoured to give to those amendments the most careful

attention and endeavoured to keep the act within the principles outlined in the draft uniform act.

Does that answer your question, Mr. Lambert?

Mr. LAMBERT: Yes.

Mr. BASFORD: Then, would it be correct to say that Bill No. S-22 does not represent a real revision but, rather, a correction of certain anomalies which have developed over a period of 30 years?

Mr. LESAGE: Exactly. It is not a complete revision of the act and it was never intended to be. But, I am not saying that later on the government would not consider a complete revision of the Companies Act. We are now pressed for more modern legislation in various fields, for example, the sections relating to the financial statements of companies, the content of financial statements and so on. We cannot work on the text which we had in 1934, and the chartered accountants cannot. Also, there are some amendments regarding the prospectuses which we could not contemplate in 1934 because securities commissions in the provinces had not developed to the extent they have now. This is the type of amendments which were foreseen. Of course, at the same time there will be here and there odd amendments because of the experience of Ontario and the discussion over the years on the draft uniform act. So, it is almost imperative to bring forward some of those amendments. But, I would not suggest you take this bill as being a complete revision of the act; as a matter of fact, it is not.

Before proceeding to study the bill clause by clause perhaps you would be interested in knowing that the Companies Act primarily is a procedural guide for the incorporation of companies. As you will recall, historically, companies or corporations are fictitious persons created by the authorities. Through the centuries the procedure was instituted in England and was followed in Canada of incorporating corporations or companies by issuing letters patent under the Great Seal. Later, with an increase in the number of companies and corporations it was not deemed advisable to leave to the cabinet the responsibility of the issuance of these letters patent under the Great Seal, and it was not felt that parliament should consider each and every case as a private bill. The first Companies Act was introduced in 1869 in Canada. Of course it followed the English law. It is what I would call the codification of the common law and the corporate law, mostly so far as companies are concerned. In addition, it is an act which regulates the relations between the shareholders and the company itself, and incidentally takes care of the public interest. However, this is not the primary purpose of this legislation.

The primary purpose of this legislation is twofold; firstly, as I said, it is a guide for incorporation and, secondly, it is an act to regulate the relations between the shareholders and the company. It is not legislation which is for the advantage of the government of Canada itself as such; it is not a tool in the hands of the government. Rather, it is by coincidence that the government itself would make use of the Companies Act for the incorporation of a few crown companies. There are a few crown companies which were incorporated under the Companies Act, such as Canadian Arsenals Limited. In doing so, I think the Canadian government considers itself as a person and not as an administrator of the company law. This is what I would call private law and not public law.

If I may make a comparison it is like the Civil Code of the province of Quebec. This, of course, is general legislation, but it is for the benefit of the citizens generally. This has very little to do with the public administration.

Now, gentlemen, perhaps I might come to the bill itself. Here perhaps I can tell you a little about each of the clauses in the bill. As I told you, they are not all of the same importance. If I go over these too quickly, I would

hope that you would stop me so that I may give a fuller explanation in respect of any particular clause.

The first is the title of the act. According to clauses 1 and 2, the act would now become the Canada corporations act. The reason for this change is to make it easier to differentiate between this act and the various provincial companies acts. As you know, there are 11 companies acts in Canada, and ours also is called the Companies Act. Sometimes this is a little confusing.

Following the pattern of Ontario, it was suggested that the title might be Canada corporations act. Why "corporations" instead of "companies"? The reason is similar to that in respect of Ontario; that is, in part I, the Companies Act deals with companies, but in part II and in other parts it also deals with corporations without share capital. I think it would be misleading to retain the title "Companies Act"; I would say it would not be the right appellation for that piece of legislation. We have copied Ontario, I think, to the best advantage and, in placing the word "Canada" in the title, it would make it clear that this is an act under the authority of this parliament.

Clause 3 is a very minor amendment to the definition of a court. This has nothing to do with the Companies Act itself. The Department of Justice brought to our attention that our definition is a little outdated in so far as the Northwest Territories are concerned. The definition now includes the territorial court of the Northwest Territories. This is in an effort to keep up to date with other legislation.

Another amendment is in respect of the definition of the word "officer". Of course, everyone in the department had a fairly good idea of the definition of the word "officer", although it was not defined in the act itself. For the benefit of everyone and to avoid confusion because there are so many references in the act to the word officer, and so many duties imposed upon officers by the law itself, it was deemed advisable to bring in a definition of the word "officer".

It is necessary to amend the definition of the word "shareholder" because the other amendments to the Companies Act have the effect of combining the petition itself and the memorandum of agreement in one document only.

Mr. WAHN: Under these amendments there no longer will be a separate memorandum of agreement.

Mr. LESAGE: No. You will see this immediately in section 7. In clause 4 the words "or insufficiency" are added to section 4 of the act in order to follow Ontario and the draft uniform act mostly. This will help to clarify the validity of the letters patent.

In clause 5, at the bottom of page 2, there is a slight amendment in defining the persons by adding the words "being 21 years of age or over and having power under law to contract". This is necessary because in the province of Quebec the status of the married woman is far from being well defined. I have taken the advice of specialists at civil law in respect of this. It is rather difficult to determine whether under Quebec law a married woman can or cannot be an applicant for incorporation. The question is: is that an act that she can perform alone or only with the consent of the husband? There is a question mark there.

In order to avoid any such confusion it was deemed advisable to bring in this slight amendment, especially nowadays when so many married women work in law firms. Everyone knows that very often the applicants are employees of a law firm and many of them are married women. If this woman has to obtain the consent of her husband, it may cause some inconvenience. Therefore, the intention is to make it very clear who can be an applicant for incorporation.

Mr. LAMBERT: In the other provinces a minor has the power to contract. It is true that this is something he may repudiate on reaching the age of 21 if it is an improvident contract. You say the person must be 21 or over?

Mr. LESAGE: Yes.

Mr. LAMBERT: I am wondering why the definition is not limited merely to those persons having the power under law to contract. Now you definitely are excluding any person under 21, whereas you did not have this before.

Mr. LESAGE: Yes.

Mr. LAMBERT: You did not have it before?

Mr. LESAGE: I do not think so. Oh, yes, I think we did. I will go back to the act. Yes; the applicant must be of the full age of 21 years. That is in the 1934 statute.

Mr. LAMBERT: It is not in section 5, subsection (1) of the old act?

Mr. LESAGE: It is in section 7 of the old act. I think you gave the reason when you mentioned that a person under 21 years, if he feels aggrieved, can have the contract cancelled. That is the law in Quebec.

Mr. LAMBERT: It is in the common law, too.

Mr. LESAGE: And if so, the contract can be revoked if it is not deemed to have been to the advantage of the contractor before he is 21 years of age. I think it would be a real danger to permit persons under 21 to contract. We have not innovated there; we merely have taken it from section 7.

Mr. LAMBERT: What did the draft uniform act say in that regard, if anything?

Mr. LESAGE: It says the same thing.

Mr. BASFORD: You have added "having power under law to contract".

Mr. LESAGE: Yes.

Mr. BASFORD: That is the addition?

Mr. LESAGE: Yes.

Mr. BASFORD: You say that this is in order to make clear who can be part of the original charter, but then you say that under Quebec law it is not clear who has the power in the case of a married woman.

Mr. LESAGE: Because the power to contract in respect of a married woman is limited. It very well may be, with regard to a type of corporation or company, that a married woman would not be illegally contracting, but in other instances if it is of major importance, it may have this effect. As I mentioned, this is a grey area and this is to make sure that accidents do not occur and will warn the law firms about their employees.

Mr. LAMBERT: The enforcement of this requirement will be by way of a statutory declaration.

Mr. LESAGE: Of course.

Mr. LAMBERT: It will be on the person's own assertion under the declaration to the effect that the person is not under a disability.

Mr. LESAGE: Yes; it always has been like that, at least since 1934. We have to take what the applicants say under their statutory declaration.

Mr. LAMBERT: I am wondering what is the effect of such a statutory declaration when it may be a question of law whether or not a person has the power to contract, and so assert. If it is found by law that this power does not exist I do not think you could charge them for making a false declaration.

Mr. MOREAU: Might this not void the application?

(Translation)

Mr. CHRÉTIEN: Mr. Lesage, when you prepared that article, you say that in the province of Quebec you doubted that a married woman could legally

be a petitioner in obtaining letters patent. Was there a study made of jurisprudence in this matter? I do not think there were any contested cases.

Mr. LESAGE: No, there never were contested cases, but I discussed the matter on a few occasions with the Companies branch Director in Quebec City, Mr. Louis Gravel, and he also seemed uncertain in this regard. He consulted with other practising lawyers and I myself had the opportunity to consult such lawyers in the province of Quebec. There certainly exists a doubt. We cannot say more than that. Then, since there is doubt, we thought it advisable to point out the danger.

Mr. CHRÉTIEN: Thank you.

(Text)

Mr. BASFORD: This creates no problem for the Secretary of State.

Mr. LESAGE: None whatsoever. It is an indication only that there may be a danger there and there is an invitation to be more careful.

Mr. MOREAU: If you will excuse us, Mr. Chairman, we have another meeting to attend.

Mr. LESAGE: There is another amendment to section 5, subsection (3) which deletes unnecessary words which might be confusing. Subsection (3) of section 5 read, in part:

—to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money—

Very few words have been deleted therefrom. Those which have been deleted were considered to be redundant. The words deleted are:

—any note payable to the bearer thereof or—

We could not see the necessity to have a duplication in the wording. That is the reason for the redrafting of this subsection.

Mr. WAHN: Will that mean a company now may issue a promissory note payable to bearer by alleging, perhaps, that it was not intended that it should circulate as money? Previously there was a very specific prohibition against a company issuing any note payable to bearer. Now, the prohibition is against issuing a promissory note intended to be circulated as money. Presumably that would mean a company could issue a note payable to bearer, because it would have to be established that there was an intention that it should circulate as money.

Mr. LESAGE: I fail to see a major difference between a note to the bearer or a promissory note.

Mr. WAHN: This probably is an improvement, because certainly very often companies issue bonds which are payable to bearer.

Mr. LESAGE: Yes.

Mr. WAHN: There is very little difference between a bonding and a note; it is a difference, really, in terminology. I am inclined to think it is an improvement, but I believe it may make a substantive change in the act, because very often companies issue instruments which are payable to bearer. All the unregistered bonds issued by an incorporated company are payable to bearer. You say there is very little difference between a bond and a promissory note; it is just a difference in terminology. I think it is an improvement but does mark a substantive change in the legislation.

Mr. LESAGE: I think I can find something on that in the report of the subcommittee of the Senate. But, since you think it is an improvement perhaps I need not go into that at this time.

Mr. WAHN: I am quite happy with it.

Mr. LESAGE: Next is an amendment to section 4. This is a redrafting. It appears to be the first application of the new method of drafting legislation. We will find that this occurs in many other places in the bill. I think this subsection had to be redrafted to make it conform more with the general drafting principle now adopted by the government.

The most important change is the addition of subsection (5), which deals with the cost of the winding up of a company.

The ACTING CHAIRMAN: I am interested in knowing that the costs should be borne by the directors rather than the shareholders.

Mr. LESAGE: Yes, because the shareholders are not responsible for the administration of the company. In my opinion, the administration of a company is the responsibility of the directors and they, being the responsible persons, would have to take the responsibility if they infringed in any way on the prohibitions in the three subparagraphs, (a), (b), or (c). It leaves to the court the authority to determine whether the costs shall be borne by one or the other.

Clause 6 is of major importance. It had been found advisable to follow as closely as possible Ontario and the draft uniform act in the preparation of petitions for the issue of letters patent. In the old system we had a petition, to which was attached a memorandum of agreement. During the past 10 years Ontario has combined the important elements in the memorandum of agreement, which is a subscription for shares by the applicants, and has inserted that in the application itself. This was studied by the drafters of the draft uniform act, and the same pattern has been adopted by the drafters of that act. So far as the department was concerned, we were only too pleased to follow this modern practice, which does away with a lot of unnecessary papers and practices.

Mr. LAMBERT: Then, this brings it a little closer to the practice followed in those provinces which use the memorandum of association?

Mr. LESAGE: Yes, much closer. We would have only one document. Would you like me to go into the details?

Mr. LAMBERT: What is the purpose of having the place of residence and not the business address? I am referring to (2) (a):

The name, the place of residence and the calling of each of the applicants.

What is the reason for using the place of residence rather than their business address?

Mr. LESAGE: It is always easier to trace persons by their place of residence. If I were in business I could change my business address each and every morning, if I so desired. I could hire the services of a public stenographer, who could give her business address as the address of my office. I think it would make it too difficult to trace.

The ACTING CHAIRMAN: Is that for the purpose of making service?

Mr. LESAGE: To a certain extent, yes, because the applicants become the first directors of the company, and they remain as directors of the company until the company is organized. This may take up to three years, and if anyone wants to sue the directors of a company which has not filed its first annual summary then the applicants are deemed to be the directors of that company. Because of a delay of three years I think it is important that those persons could be reached. Later on we will note that section 125 has some reference to this.

We had the names in full in the act, and, as a matter of practice, most people would give their name as, for example, John S. Smith. In the previous act there was this obligation of giving the name in full, and the solicitors

in the department had to write or phone the solicitor and ask, for instance, what the letter "S" stood for. This gentleman might never use the initial and might never be known as John Samuel Smith but, rather, just John Smith. I was told that the former president of the United States, Mr. Harry S. Truman, was asked what the letter "S" stood for in his name, and his reply was that it did not stand for anything, that he put it there only for appearance. We have had similar replies from other people. In our opinion, the usual name by which the person goes would be sufficient.

To proceed a little further in clause 6, there is a slight change in the capital structure of the company. Subparagraph (g) states:

where the shares of a class are to be without par value, the maximum consideration for which each share or the maximum aggregate consideration for which all shares of the class may be issued.

As is noted in the Manitoba act, it appears they had the same concern as we did and, as a matter of fact, they also put in a maximum. There was no direct connection or discussion between the two jurisdictions; it just happened that we experienced the same difficulty.

The CHAIRMAN (Mr. Pennell): Gentlemen, I apologize for being late. I am a victim of the weather. This is the second time this has happened to me in the last two weeks. I flew out on Wednesday evening and I was going to return by air on Thursday evening. But, the airport at Toronto was closed down yesterday afternoon; it was still closed this morning, and the train from Toronto arrived two and a half hours late. That is my explanation, gentlemen, and I hope you will be good enough to accept it.

Mr. LAMBERT: Mr. Chairman, the moral may be to remain in Ottawa when the house is in session.

The CHAIRMAN: Would you continue, Mr. Lesage.

Mr. LESAGE: Another slight amendment will be seen in subsections (3) and (4), which makes a difference between the objects and the powers of a company. Of course, we all know it is very difficult to draw a line between the objects and the powers of a company. But, the intent is to endeavour to make the application more severe in so far as the powers granted to a company are concerned. The first attempt to make that distinction can be traced back to somewhere between 1927 and 1934, when there was an amendment to bring section 14 which avoided the necessity of repeating the long list of powers granted to all companies, and this is our present section 14, which remains unchanged. Since the department has received many applications which repeated unnecessarily the provisions of section 14 we felt by the clarification in section 7 of the act solicitors would note more clearly the importance of section 14 and not repeat themselves unnecessarily. But, of course, when administering the Companies Act and when preparing the draft letters patent from a petition we realize it is a very very difficult problem which cannot always be solved, and that we cannot make any drastic changes and say: "No. You cannot have that in your letters patent because this is a power; this is not an object." Of course, we have to use a lot of discretion in these cases. We are rather inclined to be lenient, especially with regard to powers, on an application coming from a province where they have the other system of incorporation by way of deposits of a memorandum of agreement. The major difference between both systems is that a company incorporated by letters patent has all the powers of a natural person while a company incorporated under the memorandum of agreement system has the powers which are vested by law or in its letters patent, and the ultra vires theory applies differently in both instances. Therefore, we put it in the act, as we think it

should be, but left the door open for a very smooth interpretation because it cannot be otherwise. We cannot administer this particular legislation without taking into consideration the real difficulty of defining powers as distinct from to the objects of a company.

Mr. WAHN: I believe there has been some uncertainty in the case of letters patent in the effect if a company should violate a specific statutory prohibition. Does this revision clarify to any extent the problem for us? In other words, does it make it clear that if a company should violate a specific statutory prohibition that the result simply is that it makes itself liable to be wound up? Or does this uncertainty whether the act itself is valid or invalid still persist?

Mr. LESAGE: So far as I can see, Mr. Wahn, the general rules of interpretation of the Companies Act are not the general rules of statutory interpretation.

As I said in my opening remarks, this is rather a codification of common law and, therefore, the only real ground anyone could have for saying that a company has exceeded its power is when it is recited in the letters patent that this company shall not be authorized to exercise the powers mentioned in certain paragraphs of section 14. If it is not excluded by the letters patent it would be pretty difficult to say that a company has acted *ultra vires*, and nullity would be different than it would in the case of those corporations incorporated by memoranda of agreement because there would be a nullity *de plano* under a statutory corporation. But, under the letters patent I think this nullity would have to be proven in the courts; it is not what we call a presumption *juris et de jure*. It is merely something which could be attacked in the courts.

Mr. WAHN: Under clause 5 it states that you cannot incorporate a company which is authorized to carry on the business of insurance. Suppose one of those companies quite improperly started to issue insurance contracts. Would these insurance contracts be void under this new revision or would they be enforceable by the insured and the penalty simply be that this company which acted improperly would have rendered itself liable to be wound up?

Mr. LESAGE: It would render itself liable to be wound up.

Mr. WAHN: Would the insurance contracts be void?

Mr. LESAGE: I do not think so. I think they would be valid if they are not invalidated by any statute. But, under the Companies Act that insurance contract still would be valid. An aggravated person could easily ask for the annulment of that contract. It is possible that it is not void but voidable.

Mr. WAHN: Is there anything in these provisions which specifically state that?

Mr. LESAGE: No.

Mr. WAHN: Then would there not still be some doubt?

Mr. LESAGE: Of course, there will always be doubt.

Mr. WAHN: Could that doubt not be removed? Would it not be desirable to have in this revision a specific statutory statement that in the event a company exceeds its objects or in the event that it violates certain of these statutory prohibitions that the contracts or acts are not null and void. I understand that the penalty is that the company renders itself liable to be wound up, and that is the only penalty.

Mr. LESAGE: What you say is exactly the law as is.

Mr. LAMBERT: And there are no changes to be made?

Mr. LESAGE: That is exactly the law as is; the company is liable to be wound up. As you know, it has to come under the Winding-Up Act and it has to go before a judge of the supreme courts, or, in the case of the province

of Quebec, the superior court. All those contracts would have to be studied. But, I think those contracts are voidable but not void.

Mr. WAHN: I was under the impression that there is some considerable doubt now as to the status of contracts entered into by a company which does so in violation of a specific statutory prohibition. I do know that certain people take the position that the doctrine of ultra vires may still apply where the company violates a statutory prohibition or a specific prohibition is charged.

Mr. LESAGE: I would agree with that interpretation if it were not for subsection (4) of section 5, which provides for the winding up of a company. If this part of section 5 provides a mechanism to remedy the situation, and indicates the acts which were performed by the company then this would not be void but voidable. If there was no sanction then I would entertain a different view. I would say if there is no sanction then these prohibitions in the previous subsections of section 5 may have that meaning. But, since there is a statutory sanction of possible winding up then it indicates that the general law applies, that the company carries on its authority as a person, and the acts performed by the company are valid until they are declared to be void.

Mr. WAHN: If that is the state of the law I certainly would be quite happy. But, if there is any doubt about it—and I always understood there was some doubt—then I would think that this would be an ideal opportunity to remove any such doubt. My only thought is that perhaps you should have an opinion from the Department of Justice whether or not there is any such doubt and, if there is not, then we could be quite happy with the revision. But, as I said, if there is any doubt this is the time we should remove it because I think it should be removed. In the case of a company which exceeds its objects, for each action in contravention of prohibition contained in the charter or in the statute that involves a contract it should be quite clear that that contract is valid and enforceable against that company, and that the doctrine of ultra vires does not apply. If that is clear now then I am satisfied, but if it is not I think it should be cleared up. I know in the past I have had occasions when doubts have been raised in my mind on this particular point. Perhaps I misread the law but there was a real doubt in my own mind.

Mr. BASFORD: Mr. Chairman, I would go along with Mr. Wahn and say that this never has been quite as clear as Mr. Lesage makes it out to be. I have had doubts too.

Mr. LESAGE: Mr. Chairman, my doubts or worries are not so great because of section 14. If you look at the wording of section 14 of the act you will note at the end, subparagraph (1) (bb):

To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

This is very broad. At this point I might mention the business of loan companies and all those companies whose main business is to lend money on mortgages or other things. This is a very difficult point because any company has the power to lend money under (k) of section 14 but it has not the power to carry on the business of a loan company, and protection against those recitals of insurance companies, trust companies and loan companies which appear in section 5, as you mentioned, or telephone and telegraph companies, is given in particular legislation covering those fields. As you know, the department of insurance administer the Trust Companies Act, the Loan Companies Act as well as the Insurance Companies Act. For these reasons I think there are no other statutory grounds upon which to make a case where a company exceeds its powers or its objects. We would have to go to the letters patent; and, if we go to them I fail to see how we could make a general statement and try to define what is the common law. I think it is a matter of

interpretation in each and every instance. I really wonder if it would be wise to go into that field and to try to say this is not 'voidable' but definitely void.

Mr. LAMBERT: Mr. Chairman, I support Mr. Lesage's remarks. I think Mr. Wahn is going too far. I think it is a matter of public policy to say that actions may be voidable rather than void. When they are void there are consequential results which you may not be able to undo and, being void there is a definite, shall we say, lack of life or action right from the beginning. It is far better to go into court and get an action declared to be voidable because the court then can look at the consequential results and see what damages may have flowed as a result of that. On balance, and on a question of public policy, I think it is better to consider them as voidable rather than void.

Mr. LLOYD: I have observed the practice followed in Nova Scotia, which brings to mind what we are attempting to do here in respect of eliminating the memorandum of agreement. The practice was that attempts were made to qualify the articles of association in such a way as to modify the act through provisions in the articles which had particular application in the case of special resolutions. The act did define the special resolution and the significant thing was the requirement that it carry a three-quarters vote of the shareholders.

In the articles of association they did attempt to modify the provisions of the act; in fact, they did modify them, and the result was that many innocent people did try to follow the Companies Act and would say that X group of shareholders cannot do so and so because it requires a three-quarters vote. Then they would discover that the articles had attempted to modify this provision of the statute. Of course, this is a shocking thing to persons who are very careful about whether or not they are part of a 51 per cent group in the operation of a company. Was there a similar practice under the Canadian Companies Act?

Mr. LESAGE: This is one of the reasons that I prefer the letters patent system in Canada rather than the memorandum of agreement system. The memorandum of agreement system in principle may be a better system than that of letters patent, but it does not give to the public administration the same authority that we have under the letters patent system. Of course, if we receive an application which would ask for something contrary to the act—and that is the reason we would be studying the application—we immediately would refuse to grant the application. However, in the case of a memorandum of agreement my understanding is that the administration does not have the same authority.

Mr. BASFORD: Oh, yes.

Mr. LLOYD: I can recall in my mind very vividly—

Mr. LESAGE: I do not know what your experience is with the provincial administration.

The CHAIRMAN: May I respectfully suggest that Mr. Lloyd finish and then if someone else has questions to direct to the witness he may do so.

Mr. LLOYD: I might bring this down to reality for the benefit of those of us who are not barristers by stating that a very prominent firm of solicitors in the field of corporation work had established a standard set of articles. This standard set of articles contained a provision that clauses 22 to 42, or clauses such and such, of the Companies Act would not apply in effect in their wording of it. This had to do with the requirement in respect of special resolutions. It so happened that others accepted this standard set which issued from the corporation law office and everybody assumed they had the right to modify the provisions of the statute through the articles.

After many years of practice the firm which had originated the standard set of articles began to have some doubt about whether or not they had the power to modify the act itself under the memorandum of agreement combined

with the articles of association. I do not know whether or not the matter has been resolved.

Mr. LESAGE: I hope it will be resolved. However, perhaps the answer is not so easy. Of course, there will be an attempt to say that definitely this part of the articles is not legal. There are some instances where the limitations imposed by the act may be changed by letters patent and where the qualifications for some purposes may be changed and it will be legal. Therefore, without seeing the exact text, I would not venture to say whether it is legal or illegal. It is possible that this may be in the grey field.

Mr. BASFORD: I have a question in respect of a different matter. I have not had an opportunity to review the evidence of the Senate committee on this matter, but I am wondering whether they went into a discussion of par value and non par value shares, and the elimination of one class or another, as suggested by some writers.

Mr. LESAGE: No. It was considered that a company could have as many classes of shares as they wished. It was never considered that there should be a limitation on the classes of shares. The basic principle is you must have a class of common shares and the other classes are preferred or deferred.

Mr. BASFORD: Some writers have suggested we could do away with the distinction between shares of par value and shares without par value. The Senate committee never went into that?

Mr. LESAGE: I do not think so. Those persons are advocating that the par value system is unrealistic. This was not considered. In the actual legislation in Canada I do not think it would be wise in any way to innovate in that field. This is something which is far from being acceptable to everyone. I know of these views. Later, when we come to mutual fund companies, you will see that some aspect of what you mention is being introduced in our law.

I would say that before we go into specific legislation we must have had experience before it can be adopted, and we cannot go into statutory law to intervene in an effort to settle something which still is very controversial. However, I do know exactly what it is.

Mr. BASFORD: You want us to be typically Canadian and not innovate.

The CHAIRMAN: Do you think it would speed up things if it were possible, between now and our next meeting, for Mr. Lesage to prepare a memorandum describing each clause? The reason I bring this up is that this is likely to be a long haul and we are anticipating that the session may end.

Mr. LAMBERT: Rather than have Mr. Lesage give an explanation in respect of each clause, I would suggest that as each clause is being discussed you ask whether there are any questions, and if not we will pass on. I think this would help. Every time Mr. Lesage furnishes an explanation it opens up some questioning.

Mr. LLOYD: At least when we have a lot of explanation it is in the records of the proceedings for anybody who does not happen to be present.

The CHAIRMAN: We might follow the suggestion of Mr. Lloyd, and Mr. Lesage thinks it will meet his position too. We will proceed on that footing.

Mr. LESAGE: I will carry on without entering into too many details.

Clause 7 contains a consequential amendment to the system of deletion of the memorandum of agreement.

Clause 8 is an amendment of a minor nature concerning corrections. This has nothing to do with principles.

Clause 10 concerns section 12 of the act which is an important section. Although there is a slight redrafting of section 12 (1), there is no matter of principle involved therein. We discussed the problem of subsection (12),

on page 8, when we were on section 5. Section 12A is the one in respect of which I would like to say a few words; it has to do with mutual funds. As you know, the mutual fund companies made their first appearance in 1932 and they were almost unknown when the act was revised in 1934.

The system of mutual funds has some particularities which were not covered by the act. That is to say, shares can be surrendered by the shareholders to the company. The purpose of the addition, 12A, is to give a definition of mutual funds and to indicate the authority which can be granted in letters patent or supplementary letters patent to create shares which can be redeemed or purchased for cancellation by the company upon the surrender of the shares by the shareholder. This is of daily application. The only purpose in this amendment is to confirm what is being done.

When the bill was before the Senate a new definition in section 12 (1) (a) was given and afterwards the association of mutual fund companies came to us and said that this definition as prepared is a little too narrow and does not cover all the implications so far as the mutual fund companies are concerned. Therefore, with the close co-operation of the officials of the Mutual Fund Association and with the help of the Department of Justice a new definition has been prepared. Everyone appears to be happy about this amendment. I expect, Mr. Chairman, that this will have to be submitted at the next meeting.

Mr. LAMBERT: Do you have it in mimeograph form so that it could be distributed to the members of the committee?

Mr. LESAGE: I have one or two carbon copies.

The CHAIRMAN: We might have copies of this amendment distributed to the members before we meet next Tuesday.

Mr. LESAGE: This is merely a broadening of the definition. I am convinced that everyone is happy about this and that there will not be difficulty, because in this case as in many others we have been very careful to contact the interested parties.

Mr. WAHN: We are moving along so quickly under your guidance, Mr. Chairman, that I had not realized we had passed by clause 10.

The CHAIRMAN: I think sometimes we get the sections in the bill and the clauses intermixed. I appreciate your difficulty.

Mr. WAHN: May I ask what is the purpose of the change in clause 10?

Mr. LESAGE: Do you mean (1a)?

Mr. WAHN: New section 12. This seems to provide that a company now may issue preferred shares which can be redeemed out of capital.

Mr. LESAGE: Yes.

Mr. WAHN: I believe the existing practice is that the department takes the position you can redeem preferred shares out of accumulated income only if you go through the rather detailed procedure set out for the reduction of capital in respect of the protection of creditors' rights.

Mr. LESAGE: Yes.

Mr. WAHN: This represents a substantive change in the act.

Mr. LESAGE: That is one of the most important changes in the bill. I was going to take this up in respect of section 49, but I think you are right, that it should be taken up immediately in respect of section 12.

The Ontario act provides that any preferred shares can be redeemed out of capital. I think it was the general opinion that Ontario had gone a little too far in that field. The new legislation of Manitoba is more restrictive. Perhaps to a certain extent we are a little more restrictive in that we say a class of preferred shares may be created with the specification that it can be made

redeemable out of capital. However, the difference between the Ontario legislation and the legislation proposed by this bill is that it will have to be indicated in the letters patent or supplementary letters patent that this class of shares may be redeemed out of capital if it does not render a company insolvent, and so on.

It was suggested that our legislation in the 1934 act was outdated and unrealistic. When this was being worked out the intention was to permit the redemption of preferred shares out of capital, but only if the letters patent or supplementary letters patent so permitted, so that anyone would know whether or not a company has this authority to redeem out of capital. The public will know in advance the number of issued shares which are subject to redemption out of capital, and knowing the conditions of such redemption the public will be protected fully against the possible miscalculations by a board of directors in redeeming preferred shares at large out of capital. Instead of saying "at large", we say "if permitted by letters patent" and therefore no one will be taken by surprise.

Mr. WAHN: From what Mr. Lesage has stated I gather that it is considered important the public should realize at least that this power exists.

Mr. LESAGE: Yes.

Mr. WAHN: I think there is good reason for this. For example, there might be \$1 million worth of free assets, or assets available for creditors generally, but there might be redeemable preferred shares to the extent of \$999,000, and if the company redeemed those shares it would not render itself insolvent but would cut down the assets available to creditors if anything should go wrong.

May I ask whether there is any provision among these amendments requiring a public company, at any rate, to indicate on its published financial statement, and specifically its balance sheet, that it does not have this power in its letters patent, or supplementary letters patent, because although the documents are a public record, they certainly are investigated very rarely. It would seem to be a simple procedure to request that public companies indicate on their financial statement that they have this power.

Mr. LESAGE: There is no specific requirement in the financial statement provisions in this bill.

Mr. WAHN: Should there be?

Mr. LESAGE: I wonder, because there is the obligation to print, to attach, or to make available a copy of the conditions on each share certificate.

Mr. WAHN: As a practical matter an investor will look at the published financial statement but he will not read very closely the fine print on the back of a share certificate, nor will he examine the letters patent. If the principle is important, this would seem to be a convenient way to provide this service to the investor.

Mr. LESAGE: Yes, but the way these preferred shares are defined in the letters patent or the supplementary letters patent, I think it will be necessary for the auditor of the company when preparing the financial statement to indicate the type of shares—that is, whether they can be redeemed out of capital or only out of profits. The company will have to file with the department a notice of redemption and in that notice must indicate whether redemption is out of capital or out of profits.

So, having defined the obligation in the notice, I think as a consequence it has to be reflected in the balance sheet. If the redemption is out of profits, a capital surplus has to be created; if redemption is out of capital, our new section 49 (3) says that the shares are to be cancelled. If you have shares cancelled, the legal reason must appear on the balance sheet. If they have been

redeemed out of net profits, the shares are not cancelled and a capital surplus is created. I think it will have to be audited separately on a new balance sheet if you want to give a full explanation, as is required, of the capital structure of the company. I think it flows by itself.

Mr. BASFORD: I think Mr. Wahn should think about this between now and the next meeting. I would move that we adjourn.

Mr. LAMBERT: On Tuesday initially we will be dealing with another matter which we hope will not take unduly long. Will consideration be given to sitting while the house is sitting?

The CHAIRMAN: Before we close our meeting on Tuesday I would suggest that it may be necessary to entertain such a motion, because as I say the time is getting very short now.

(HOUSE OF COMMONS

Second Session—Twenty-sixth Parliament)

1964-65

STANDING COMMITTEE

ON

CANADA,

BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, Esq.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

(TUESDAY, MARCH 2, 1965)

Respecting

Bill S-22, An Act to amend the Companies Act.

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch,
Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Grafftey	More
Armstrong	Gray	Moreau
Asselin (<i>Notre-Dame-de-Grâce</i>)	Grégoire	Mullally
Basford	Greene	Nowlan
Bell	Habel	Nugent
Blouin	Hales	Otto
Cameron (<i>High Park</i>)	Jones (Mrs.)	Pascoe
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Kelly	Rynard
Caouette	Kindt	Scott
Chrétien	Klein	Skoreyko
Côté (<i>Chicoutimi</i>)	Lambert	Tardif
Douglas	Leblanc	Thomas
Frenette	Lloyd	Vincent
Flemming (<i>Victoria-Carleton</i>)	Macaluso	Wahn
Gelber	Mackasey	Watson (<i>Châteauguay-Huntingdon-Laprairie</i>)
	McCutcheon	Woolliams—50.
	McNulty	

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 2, 1965.
(21)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Gelber, Gray, Greene, Habel, Kindt, Klein, Lambert, Lloyd, Mackasey, McCutcheon, McNulty, More, Moreau, Mullally, Nowlan, Pennell, Scott, Watson (*Châteauguay-Huntingdon-Laprairie*) (22).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee first dealt with a private bill in respect of which verbatim evidence was not recorded.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

On motion of Mr. Moreau, seconded by Mr. Basford,

Resolved,—That the Committee cause to be printed 750 copies in English and 300 copies in French of the Minutes of Proceedings and Evidence relating to Bill S-22.

The Chairman stated he had received a letter from J. Peter Williamson, Associate Professor of Law, University of Toronto, making some suggestions for amendments to Bill S-22. Mr. Lesage was of the opinion that the proposed amendments which he had filed with the Committee at the last meeting would meet the objections of Professor Williamson, and the Clerk was therefore directed to send him a copy of the proposed amendments.

The Clerk was further directed to have Professor Williamson's comments and suggestions mimeographed for distribution to members of the Committee.

Mr. Lesage explained Clauses 11 to 33 of the Bill, and was questioned.

On motion of Mr. Moreau, seconded by Mr. Chrétien,

Resolved,—That the Committee continue study of this Bill on Wednesday, March 3, 1965, at 3:30 p.m. or after Orders of the Day.

At 11.00 a.m., the Committee adjourned until Wednesday March 3, 1965, at 3:30 p.m.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

TUESDAY, March 2, 1965

Note—The evidence, adduced in French and translated into English, printed in this issue, was recorded by an electronic apparatus, pursuant to a recommendation contained in the Seventh Report of the Special Committee on Procedure and Organization, presented and concurred in, on May 20, 1964.

The CHAIRMAN: Gentlemen, before we proceed with the clause by clause study and explanation of Bill No. S-22 may I say that earlier we passed a motion which called for the printing of the evidence on each bill to be dealt with separately. We did not have a blanket motion at that time so I will have to ask for a motion at this time for the printing of the evidence on this particular bill.

It has been suggested that we have 750 copies printed in English and 350 in French. But, I am in the hands of the members of the committee and will accept a motion at this time.

Mr. MOREAU: Mr. Chairman, I move that we have printed 750 copies in English and 350 copies in French.

Mr. BASFORD: I second the motion.

Motion agreed to.

The CHAIRMAN: I have a further matter to bring to your attention at this time. I have a letter from J. P. Williamson, Associate Professor of Law at the Faculty of Law, University of Toronto.

This letter, which is dated February 26, 1965, is addressed to myself, and reads as follows:

I have spent some time studying the provisions of Bill S-22, which has been referred to your committee, and I enclose an analysis and some suggestions as to some of the sections of the bill. Your committee may find some of the observations useful. I would like to offer comments on other sections but have restricted myself so as to place the commentary in your hands quickly.

If it would be of any help to the committee I would be willing to appear before it, if an appearance could be arranged so as not to conflict with my classes.

A copy of this letter was sent to Mr. Lesage. I am having his commentary mimeographed so that a copy can be put in the hands of every member of the committee.

Is it your wish that we defer any action on this matter to the steering committee or do you feel that we should discuss it at this time?

Mr. MOREAU: Mr. Chairman, that is rather a difficult matter to decide. We have no idea how substantive the commentary is. We do not know the extent of the suggestions or the changes which are proposed. I think the decision whether or not we should hear Mr. Williamson would depend on the nature of the amendments.

The CHAIRMAN: Perhaps we should hear from Mr. Lesage at this time. He is conversant with the proposals put by Professor Williamson. Mr. Lesage would know how extensive these proposals are and to what extent they are dealt with in the bill.

Mr. LOUIS LESAGE, Q.C. (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Mr. Chairman, this letter was put on my desk at 8:30 this morning and I had a quick glance at it at that time. This letter appears very sound, if we consider the original section 12A as proposed in the bill but, at the last meeting I indicated I had a copy of a proposed amendment to that section and, in my opinion, if Mr. Williamson had had a copy of that amendment in his hands before he wrote the letter I am sure he would have changed his views.

In substance, Mr. Williamson says that the section, as proposed in the bill, is far too restrictive. Mr. Williamson is not the only one to have mentioned that. We have received the same comment from the Metropolitan Toronto Board of Trade and from the Association of Mutual Fund Companies. As a matter of fact, we have discussed with officials of mutual fund companies an entirely new section. The re-draft was prepared by Justice and verified by interested people in the field of mutual funds. They have declared themselves entirely satisfied with the amendment we are about to propose.

I do not think it would be fair at this time to criticize Mr. Williamson or to make any comments on the letter he wrote because it does not have reference to the bill as we have amended it.

I think at least we should give Mr. Williamson an opportunity to read the amendment we are proposing because, like Mr. Williamson, no one was happy about it.

Mr. MOREAU: Mr. Lesage, do you feel the proposed amendment to the bill meets Mr. Williamson's objection?

Mr. LESAGE: I would think so. As I told you a moment ago, I received this letter at only 8:30 this morning. I have read it a second time since I have been waiting to give evidence. Mr. Williamson's approach is to make a comparison with some of the United States statutes, as well as statutes from other jurisdictions. The danger in making comparisons with other statutes is that a statute must be considered as a whole. A section might appear to be very appealing at first reading, but you may find that it does not fit into the Companies Act. We have amended it by greatly widening the definition of mutual fund shares and mutual fund companies so that it now will embrace all the possibilities. I think this will meet the basic criticism of Mr. Williamson. If he had been the only one, of course, I could not make the same comments. But, Mr. Williamson is the third one who has raised this matter. We in the department agreed immediately with the views of the Metropolitan Toronto Board of Trade. We have worked with persons and associations who are very interested in mutual fund companies. This is the reason we are offering, for your consideration, an entirely new section. However, I do not think that many of Mr. Williamson's comments would have been made if he had had an opportunity of considering this amendment.

Mr. SCOTT: Does his letter refer only to section 12?

Mr. LESAGE: Yes.

The CHAIRMAN: May I intervene at this point and state that we are having it mimeographed so that every member will have an opportunity of looking at it between now and the next meeting. Mr. Williamson has made a painstaking investigation and I think his letter deserves consideration. I will read one line from his letter: "I believe section 12A, as proposed, can be much improved on." Mr. Williamson then proceeds to quote authorities and set out his views.

Mr. SCOTT: Mr. Chairman, in the interim, would there be any value in sending a copy of the proposed amendment to Mr. Williamson? It might be that the proposed amendment would meet his objection. This procedure might save him a trip.

The CHAIRMAN: Mr. Scott, that is a very good suggestion. If Mr. William-son is still interested in coming, after having seen the new amendment, that would be fine. But, perhaps, as you have suggested, after seeing the proposed amendment, he may decide that it is not necessary to come.

Would that procedure be agreeable to the members of the committee?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: We will now revert to Bill No. S-22. I believe we were on page 10 when we adjourned.

Mr. Lesage, have you completed all your comments or are there any further observations you wish to make at this time?

Mr. LESAGE: Mr. Chairman, when we adjourned we were discussing mutual funds. We were dealing with section 12A. This morning's discussion will be only a continuation of our last meeting.

The CHAIRMAN: Then you are commencing at page 10.

Mr. LESAGE: Yes, page 10, clause 13.

Mr. BASFORD: Mr. Chairman, we only got as far as clause 12A during our last meeting and I take it that at the present time we will be dealing with the proposed amendment to Bill No. S-22.

The expression "mutual fund shares" was used in both sections. I question the wisdom of using the word "share" for something which usually carries with it no voting rights and no rights to express opinion on management, as well as the usual things that go with the word "share". As I said, I question the wisdom of using the word "share" in the Companies Act.

Mr. LESAGE: I have had some experience with people in mutual fund share companies and, as you say, these are not shares within the strict meaning of the Companies Act or corporate law. But, these have so many features of a share that the closest term we can use is the word "share". As you indicate, they have another very important feature, somewhat in the nature of a trust ticket. They have both elements.

You also made reference to voting rights. In some instances there are almost no voting rights, but in most mutual fund companies the mutual fund shares carry a voting right; but, I understand, as is the case in many public companies, they are not exercised by all the shareholders because there are a great number of the small shareholders who do not appear to have sufficient interest to attend the meetings. These people may vote by proxy and leave the administration in the hands of those management companies who advise these mutual fund companies on administration. But, in order to change the word "share" we first would need to have a substitute, and even if we did come up with a substitute I wonder if it would be fair not to give these mutual fund shares a broader meaning than the one they have now. They have been known in Canada since 1932 as shares. They have been known in the markets as shares. Although I admit that the definition does not meet exactly with the normal definition of a share, I think it would be unfair to those companies and even to the people to take out the word "shares" from the term "mutual fund shares".

(Translation)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, when we speak in French of "mutual fund shares" we make a certain distinction. In general "mutual fund shares" are called participation units so as to distinguish them from company shares or various other shares. I do not see the expression "participation units" in the French text. What does Mr. Lesage think about it?

Mr. LESAGE: Well, the expression "participation unit" does not appear in the French text but in the English version there is "participating interest"

which is to be found in the bill as it was submitted and, I think, in subsection 3 of the amendment we intend to submit which indicates that the definition of a mutual fund share includes this factor of participation unit.

Like you, Mr. Côté, I recognize that it is very difficult to arrive at a definition that can meet all the factors, and in the amendment we have tried to keep the share factor and the factor of participation units. I think both should be kept. On reading the amendment I think it can be realized that in subsection 3 of section 12(a) that factor has been retained.

Mr. CÔTÉ (*Chicoutimi*): Thank you.

(Text)

The CHAIRMAN: Are there any further questions on clause 12(a) at this time?

Mr. BASFORD: What control is exercised over the operation of the mutual fund? I take it there is none under the Companies Act.

Mr. LESAGE: This is the same principle as that which you will see later when we come to the prospectus section for which we have proposed amendments in this bill.

The Companies Act was revised in 1934; and even before—I think in 1917—the prospectus sections were brought into the Canadian Companies Act for public companies, copying the 1908 Imperial Act.

To varying degrees, in all provinces there has developed a securities commission or an agency of a similar nature. Dealings in shares or securities is primarily a provincial affair. We are keeping the prospectus sections in our Companies Act, but we are exempting from those sections those companies which have to comply with provincial securities commissions. As you know, most of them will be in Montreal, Toronto and Winnipeg. The mutual fund companies cannot offer their mutual fund shares on the market without satisfying those securities commissions.

As you see, protection is not federal, and we think it should not be federal since the provinces have exercised their authority the protection of the public is complete within the provincial agencies. But in certain cases and in circumstances in which the government feels that those securities commissions do not offer to the public proper protection, the prospectuses provisions in the Companies Act remain, and the government may require any company or any group of companies to comply with the prospectuses sections as they are now in the Companies Act.

I would say that our decision not to entirely delete the prospectuses section was to provide a safety precaution; but mutual fund companies are public companies and they have to comply with the prospectuses sections or, if this bill is approved as drafted, they will have to satisfy the securities commissions.

Does that answer your question.

Mr. GREENE: I would like to ask a question along the same lines, Mr. Lesage. I am not quite sure whether such items as disclosure of the prospective purchases and sales in mutual funds should or could be within the purport of the Companies Act in this section. So far as I can determine, unless there is provincial legislation to this effect, there is no requirement federally that mutual funds shall disclose holdings or purchases and sales during the year to their shareholders. In this day of financial dealings, we get directors of many companies who are also directors of mutual funds, and surely it is in the interests of the shareholder in the mutual fund to see to it that there is no conflict between purchases and sales by the directors that are not in the interest of the shareholders.

Mutual funds are sold across Canada and bought by purchasers in good faith from one end of the country to the other. If we leave this matter purely to the provinces, it seems illogical that while we permit their incorporation we should say, "After you are incorporated you are in the hands of the provinces.

If you cannot get information or if there is insufficient disclosure or you are not permitted to know what your fund is doing with your money, then that is too bad; it is up to the provinces."

I wonder what are your views, and whether you think within the ambit of the Companies Act it should be mandatory that this kind of information be made available on a periodic basis to shareholders in mutual funds. Or do you think we would be out of our league if we were to proceed along those lines?

Mr. LESAGE: I think the answer to your query is in the act and in the bill. The provinces will require a prospectus. Although we have provided an exception in the bill for prospectuses, it will be a requirement that a copy of the document which has been filed with the provinces be filed with the Secretary of State. Then, if this document is not sufficient, the federal authority retains the power to require that company to give information which would be normally required under the prospectuses section. Even if they have to file only to obtain the approval of the provinces, the prospectuses will be filed in the department of the Secretary of State and the copy that will be filed in that department will have to contain the full financial statement and full disclosure of the funds operations. If it does not, then the department will require the extra prospectus just as though the exception did not exist. Those prospectuses are public by their nature; they are very widely open to the public and full disclosure of that information is permitted.

I think once you have seen the mechanism of the amendments we are proposing you will realize that we are not giving birth to the baby and then letting him cry alone. We will continue to supervise by way of requiring the filing of prospectuses.

Mr. GREENE: Is this on an annual basis?

Mr. LESAGE: In the case of mutual funds it has to be at least on an annual basis because of the nature of their operations.

Mr. GREENE: That prospectus will require to give details of purchases and sales during the year?

Mr. LESAGE: Of course.

Mr. MOREAU: Is this not also regulated to a considerable extent by the fact of the listing and the exchanges? In the provinces it is taken care of to a certain extent, perhaps to a greater extent.

Mr. LESAGE: I think so, but at the same time we keep a federal control.

Mr. GREENE: I think all of us have felt that it is ludicrous that a United States company doing business in Canada—and this applies to mutual funds as well as to ordinary companies—has to give far more detailed information to its United States shareholders than to its Canadian shareholders. That is my greatest concern. Most of those companies prepare two statements for their shareholders. They prepare one for their United States shareholders, and this contains much more detail of inside trading and benefits going to directors. By the United States S.E.C. law it is mandatory to give such information. However, these United States companies in Canada, even though they are doing business in Canada and have their main assets in Canada, are able to publish financial statements which give far less information for Canadian shareholders because we have not seen fit to protect our shareholders to the same degree as the United States.

I am wondering, within the purport of these amendments, whether you feel there is sufficient power and whether the situation will be remedied with regard to mutual funds. I am referring to the degree to which Canadian shareholders will be required to be given more information from their mutual fund

companies in connection with dealings during the year, inside operating, interlocking directorships, benefits going to directors, and so on. Is there sufficient power to ensure that more information is given in his regard than they presently obtain? Have we gone that far or do you feel we should go as far as the United States?

Mr. LESAGE: Companies which have to sell their shares or any part of their shares on the United States market have to comply with the S.E.C. regulations. Our amendment to the prospectus sections requires that if they file with the S.E.C. they will have to file a copy of what is filed with S.E.C. Therefore, Canadian shareholders will have the same protection as United States shareholders in that way. I admit that we may never have gone as far as the United States, but I wonder whether the entirely new provisions we are bringing in concerning financial statements will not to a great extent force more disclosure and give more information. When you come to the financial statement sections you will see that all the old material has disappeared and that completely new legislation is being brought in.

The CHAIRMAN: Are there any further questions?

Mr. BASFORD: What is the need for subsection (4)? Surely this is the very essence of a mutual fund share, that it does participate.

Mr. LESAGE: Of course. I think Mr. Côté asked that very question. It is to help with the definition of a participating interest. Let me take my text here. There, you see, I read subparagraph (4):

There may be included in the conditions attached to mutual fund shares a condition providing for a participating interest in any fund administered by the company.

Some mutual funds which are in existence in Canada at this moment have only one class or one group of shares. The shares of administration and the shares which represent the participating interest are creating the same fund, I would say. By adding this subsection (4), it clarifies the definition of a share. Earlier, Mr. Basford, you worried about the definition of the word "share" and I told you that in the amendment we had brought in the element of a participating interest. It is in the very subsection (4) that we see the participating interest which is coming into that definition by way of subsection (4).

Mr. BASFORD: I think it should read "shall be included" rather than "may be included".

Mr. LESAGE: If a share is by its nature a participating interest, is there any need to indicate it separately? But if it is not, if you have a type of share that corresponds with the common law definition of a share on one hand and the other type, I think that (4) is necessary here to cover both cases and to clarify the definition of which we were not too happy earlier. If you do not have that participating interest notion well indicated I think there would be a possible misunderstanding. But the word "shall" is not necessary there. It may include—

Mr. BASFORD: I am not entirely satisfied but I will not pursue it further.

The CHAIRMAN: Is everyone else satisfied?

Some hon. MEMBERS: Yes.

The CHAIRMAN: Very well. We will turn to page 10 and come back to clause 13 later.

Mr. LESAGE: We have to deal with clause 12 first at the bottom of page 9. These are, I would say, almost drafting amendments to section 14 concerning the powers of the company and, unless some members have some precise questions, perhaps it need not be explained further than what we have said in the notes on the right hand page.

On clause 13—"Holding Company" "subsidiary company" defined.

The amendment is for the purpose of prohibiting the practice of a subsidiary company holding shares in its own holding company. This comes from the draft uniform companies act.

Mr. MOREAU: What would you say constitutes a subsidiary company? Are you sure you are not trying to prevent entirely the interlocking ownership of shares?

Mr. LESAGE: No.

Mr. MOREAU: Just what is your definition of "subsidiary"?

Mr. LESAGE: We have to refer to 121 (b), for the definitions.

Mr. MOREAU: We will be coming to that later?

Mr. LESAGE: Yes.

(Translation)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, I would like to revert here to section 13. In the French text the term "holding company" (in English) is used time and time again.

Mr. LESAGE: Yes.

Mr. CÔTÉ (*Chicoutimi*): We have the term "*société de gestion*". I think it is a very satisfactory translation of the term "holding company" and I wonder why it could not be used here in the text. I am not an academician, of course, but I think the term "*société de gestion*" fully translates the meaning of "holding company".

Mr. LESAGE: I do not pretend to be an academician either, Mr. Côté. The main reason why the French term was not changed, and it is difficult to change them in an amending bill, is because the term does not always coincide with the one used in other sections that have not been amended. So the French text we have at the present time will have to be entirely redrafted when the statutes are revised, and you can rest assured that, particularly in the part dealing with financial statements, quite a number of French terms will have to be changed. But it cannot be done at the present time because the same terms would be defined in a different way in the same act. So we have to abide by what the gentleman concerned decided to use as a translation in 1934. Even since 1934 the French terms used for accounting have changed. We have a glossary of the modern French terms prepared by the Association of Chartered Accountants and, like yourself, they have asked us to use it in translating the bill, but for the reason I have just given you, it is better to wait a year or two until the statutes are entirely revised. You may rest assured that the department is following the matter closely.

Mr. CÔTÉ (*Chicoutimi*): Thank you, Mr. Lesage.

(Text)

Mr. LESAGE: Thereafter in clause 14 there is an amendment to section 17. The main amendment to section 17 forms part of a series of amendments in the changes of the capital structure of companies. Heretofore, the provisions of sections 48 to 58 of the Companies Act, which provide for an increase and decrease and other changes in the capital structure, were far too limited and there was a temptation by the solicitors in practice by all the companies, and even with the complaisance of the department, to make use of section 17 to cover some cases which were not covered by those previous sections, 48 and 49 particularly. But, you will see that we have opened section 48 to prevent misinterpretation or too large an interpretation of section 17. Therefore, we are closing slightly in section 17 and reopening in the right place, in sections 48 and 49. We have also provided that a public company can be converted into a private company.

The CHAIRMAN: Excuse me. Would you be kind enough to give us the page?

Mr. LESAGE: We are still on page 11, section 2. We are also providing for the reverse. The act as it stood was permitting merely a private company to be converted into a public company and we had no specific authority for the reverse although we were using the general authority of section 17 (1) to do so we thought it was perhaps too broad an interpretation and we have tried to correct this situation by amending subsection (2) of section 17.

On clause 15—*Change to be sanctioned.*

Mr. BASFORD: This is a very small drafting point, Mr. Lesage. Why, in subclause (1), do you speak of two thirds of the votes and in subclause (2) to three fourths of the votes?

Mr. LESAGE: I think if my memory is good, it is because of the other legislation, it is to conform with other legislation. I think if we go to the draft uniform companies act we will find there three fourths and in other jurisdictions we would find three fourths for that purpose. When we changed it from two thirds to three fourths there were no other reasons than to seek as much uniformity as we could with other jurisdictions.

Mr. BASFORD: Surely it would be easier for law students to have it two thirds all the way through.

Mr. LESAGE: Yes, if I understand the situation in Ontario, Ontario asked in that particular case for three fourths. It is better to have the section identical all across the country.

Mr. MOREAU: It is too easy for law students as it is. There are too many of them!

Mr. LESAGE: Clause 15 is a mere drafting amendment for the publication of the bylaws. Clause 16 is twofold. On page 12, section 22, it has the use of the word "limited" or the provision "Ltd." In the past we have received applications for change of name of companies for the mere reason that certain companies preferred to use only the letters "Ltd" instead of the word "Limited", and the reverse. We do not think that anyone could be misled if a company chooses to use either the word "Limited" or the abbreviated "Ltd" as the last word of the corporate name. This would be of great advantage to companies when designing their advertisements and so on and they still would be keeping within the law. In 1929 or 1930 the word "Limited" did not form part of the corporate name. But, in the revision you will see that the wording of the act is changed and the word "Limited" or the abbreviation "Ltd" shall be the last word of the name of each company. We felt this would be helpful to the companies.

The second important part of section 22 concerns the use of the French and English form of the company's name. This suggestion has come forward during the last five years and we are implementing only the general wish of interested parties across Canada. We are permitting the use of bilingual names so that the company can use its name either in its French or English form or, if it wishes to do so, in both.

Mr. MOREAU: But, the assignment of a French name still rests with the letters patent.

Mr. LESAGE: Yes. Of course, a company cannot translate its own name without asking for supplementary letters patent.

If you would permit me to go right to the very last clause of the bill, page 44, clause 51 vests a similar authority in the Secretary of State to permit the translation of corporate names of corporations or companies incorporated by special act of parliament so these companies will not have to go to parliament for only the translation of their names; these will be implemented in the department and given sufficient publicity in the *Canada Gazette*.

Clause 17 at page 13 refers to the surrender of charters. We are giving an opportunity here to some companies who never have operated or who ceased operation many years ago and still have a charter which they want to surrender, but they do not do it because there is a \$50 fee as well as other fees. It is our feeling that we should help these companies to surrender their charters by simplifying the procedure, and we have dispensed with the fee. We feel this is in the best interest of the company as well as the general public of Canada.

Clause 18 provides for an amendment in respect of the requirements of printing the information or the text of the conditions attaching to preferred shares on the back of share certificates. In the past it has been almost impossible, even with two pairs of glasses and a magnifying glass, to read the printing, and in order to correct the situation companies will be permitted to attach a rider to the share certificate, giving all statements or notices that such a company has preference rights, conditions and restrictions attaching to a certain class of shares, and that the full text may be obtained without cost from the company itself. If the company fails to do this the department can always furnish that text.

Clause 19 refers to a very slight amendment on share warrants. Only public companies are authorized to issue share warrants. I have looked at the text of other provincial legislation and it also restricts the share warrants to public companies. This always has been the law because the definition of a private company is that it cannot offer shares to the public and the right to transfer its shares is restricted, whereas a share warrant is, by definition, a document which can be transferred to the bearer.

Mr. MOREAU: How can you stop trading on an if, as and when basis in the case of a company which is going public? Usually trading develops long before conversion is made; in other words there develops a street market for some of these and, I presume, we are not attempting to prevent that.

Mr. LESAGE: This is a matter of share warrants.

Mr. MOREAU: I am thinking of a case where perhaps certain rights become available, even if a company is going to go public, and so on; quite often a street market develops in respect of those shares, before the rights to them are available, and I am wondering if you have any way of coping with that.

Mr. LESAGE: It is the responsibility of the holder of the share to see that the share is registered in his name, and the share warrant is a mere exception. But, if the holder of a share warrant wants the shares registered in his name he has to ask the company and they are obliged to do it. I do not think anyone can complain about the fact that his share is not registered if he has not asked the company to register it. I do not think any rights would be lost in that respect.

The next is clause 20. You will recall when we were on clause 17 I said we were stating the conditions for alteration of the capital. In clause 20 we are providing for a new scheme, mainly under sub-sections (4) and (5), which would cover cases where unanimous consent of shareholders can be obtained. This is a daily application in cases of closely held companies. If it were not for those amendments, even with unanimous consent, these companies would have to go to the courts under section 126 for a compromise or arrangement, and when there is unanimous consent of all interested parties we feel that the department should be given the authority to sanction by supplementary letters patent a bylaw so unanimously approved. But, when there is not such a unanimous approval and if the case does not fall under one of the headings of section 48 then the provisions of section 126 apply and the company may ask for a confirmation of a compromise before a judge of the supreme court or the superior court, depending in which provincial jurisdiction you are.

We will now take up clause 22 near the top of page 16. We have a slight amendment to offer regarding the possibility of redemption of preferred shares out of capital. I am referring to line 4 where, pursuant to sub-section 1 of section 12 we will be more precise in our amendment to sub-section 1A of section 12. This is to cover the case of shares being redeemed out of capital. We have asked for the repeal of section 50.

Mr. SCOTT: In respect of section 21, why is it that when they are redeemed the capital of the company is decreased?

Mr. LESAGE: Well, because it is out of the capital. It is, by definition, a redemption out of capital, so automatically it follows if you redeem out of capital you are decreasing your capital.

Mr. SCOTT: When they reduce the capital do they have to do anything to satisfy you that that is not harmful to their creditors?

Mr. LESAGE: They have to file a notice under section 62 when the shares are taken out of capital. But, it is the responsibility of the company to indicate that the redemption out of capital is not made when the company is insolvent or, if it is, that such action would render it insolvent. There is no practical means for the department to verify whether or not the transaction is bona fide; it is up to the company to do that. And, the same legislation is used where the redemption out of capital is permitted. But, the difference between this legislation and other provincial legislation is that the feature of a share being redeemable out of capital has to be expressed clearly in the letters patent or supplementary letters patent. This does not concern the shares at large which can be redeemed out of capital; it refers to only those shares which are provided for in the letters patent or supplementary letters patent.

Mr. SCOTT: Is there any limitation in the act in respect of the granting of charters as to the ratio or percentage of shares that can be redeemed out of capital?

Mr. LESAGE: No, actually this was not permitted; it is an improvement which is being brought by this bill. Other jurisdictions have gone much farther than we are going and we are taking more precautions in limiting to a class or classes of shares that feature of redemption out of capital. But, in some other provinces you will note that redemptions out of capital are permitted, but none that I know of as yet on common shares; it is only on preferred. Even the draft act was going as far as permitting redemption out of common shares.

Mr. MOREAU: How would the redemption of common shares fit within the context of the Income Tax Act? In my opinion, there would be room for all sorts of abuse.

Mr. LESAGE: I would be at a loss to answer your question, but we are not contemplating the redemption of common shares.

The CHAIRMAN: Do I understand that this is the only act in Canada which will permit redemption of common shares out of capital?

Mr. LESAGE: Oh, no, we are not. No one has even ventured that far yet. In some foreign jurisdictions you have that situation but to date it has not existed in Canada.

The CHAIRMAN: That is what I thought.

Mr. LESAGE: Clause 22 repeals section 50, which seldom has been used because it was imposing the addition of the words, "and reduced" after the word "limited" in a corporate name, where the company was reducing its capital. I have been told that it was used once many, many decades ago, but the morning after another supplementary letters patent was issued to delete those words. So, this is a remnant of 19th century legislation and we are taking it out.

Clause 23 is merely a drafting amendment, and I do not see anything of substance there. Clause 24 is the same; we have the same principle of keeping the period of six months after the sanctioning of a by-law before the issuance of the supplementary letters patent. There is nothing new.

Clause 26 has the appearance of being more important but, in practice, it is not. It takes from the companies the right, by bylaw, to create from their common shares a class of preferred shares. I have been in the department for eleven years and have only noted one or two cases, although none in the last seven or eight years, where a company itself would create its preferred shares.

Section 59 so limited the possibilities of the conditions attaching to preferred shares that it was not responding to the normal needs of the present day and, therefore, this section being of no use we are now suggesting its deletion. We are giving the public better protection by having any change in the capital structure made by supplementary letters, with a notice published in the Canada Gazette; otherwise, a company could change part of its capital stock into preferred stock without giving notice to anyone except the Secretary of State and, therefore, no one would know about it.

Mr. MOREAU: Does any jurisdiction permit this?

Mr. LESAGE: It is still a remnant of old legislation. I think you will find that in the Province of Quebec it has not been deleted from its companies act. The Province of Quebec has not revised their legislation because all that material comes from imperial acts which were brought into Canada in 1869 and so on. At that time these sections were all-important. But, corporate law has stated otherwise and new legislation does not permit that. But the old companies can still keep them since we have not come before parliament in the last thirty years. Perhaps we are a little old fashioned.

Mr. MOREAU: You said that this has not occurred in the last six or seven years. Would this not coincide with changes in the Income Tax Act which puts certain restrictions on the recapture of capital?

Mr. LESAGE: Although the Income Tax Act is not a statute for corporate law it did have very deep influence on corporate law and the practices connected therewith.

In respect of clause 27 and section 61 at page 17, experts in the Department of Justice tried to clarify the text of section 61 of the Companies Act so that it could be read intelligently. We were all of the same view that it was almost impossible to read section 61. It took three or four readings to digest it. However, it now has been split into paragraphs and sub-paragraphs. We have taken very unnecessary parts from section 61 to clarify it. We hope it will be clearly understood in its present form.

Mr. MOREAU: I know the Senate spent a great deal of time on that particular section.

Mr. LESAGE: They did. In respect of section 61, heretofore only two conditions were accepted in cases of redemption or purchase for cancellation. The bringing in of subsection (3) of section 49, as we have seen earlier, permitting the reduction out of capital, relieves to a very large extent section 61, which certainly was too restrictive and too difficult to read. We hope to have achieved something by this amendment.

With regard to clause 28, section 62 is amended and section 62A is inserted. Section 62, provides for notice of redemption out of profits or out of capital and section 62A provides for the notice of surrender of charters of mutual fund companies.

There is a small amendment in clause 29 which permits the introduction into this legislation of a principle which was outlined by the courts of the

Province of Quebec, borrowing on the guarantee of future assets which, according to some old judgments are not permissible under the civil code. So, the amendment set forth in clause 29 provides for present or future borrowing. The other expression used is "currently owned or subsequently acquired". As a matter of fact, when we issue letters patent for companies with head offices in the Province of Quebec we add those words in our letters patent. We have provided for that in the act now. This is only to cover a situation which is peculiar to the one province.

Clause 31 covers the prospectus situation, which I explained earlier this morning. I think I have told you what the government's intent was in that respect.

Mr. MOREAU: This covers Mr. Greene's point, that the same information should be available to the shareholders.

Mr. LESAGE: Yes.

Mr. MOREAU: Clause 32 is a consequential amendment.

Mr. BASFORD: If I may revert to clause 31, what is the effect if they fail to file this prospectus with you?

Mr. LESAGE: If they fail then the offering to the public is null because we are keeping these prospectus sections. If you will note, all the sections are not removed by the exception which is provided for and the nullity of the offering to the public would be exactly the same. But, this has worried us very little since provincial jurisdictions are keeping a very close eye on it.

Mr. BASFORD: I would like you to comment on the theory put forth by many people that we should have a security exchange commission and that in many jurisdictions the provincial securities legislation is inadequate.

Mr. LESAGE: I wonder, Mr. Chairman, if I should come down to that?

Mr. MOREAU: Well, you have maintained the prospectus sections of the bill that cover at least those jurisdictions where securities and exchange commissions are not operative, for instance, in the Yukon and in the Northwest Territories, so there is some appreciation of this in the bill.

Mr. LESAGE: Yes.

Mr. BASFORD: How do you determine the meaning of the word where a company makes an offer to the public of those securities in any province? Surely if you advertise in the *Financial Post*, which is published in Toronto, this is read and subscribed to by people in New Brunswick who would purchase the shares.

Mr. LESAGE: It is a matter of civil law to determine where the contract takes place and I think it always takes place at the company's head office or at the transfer agent office of the company. If it is offered in Toronto I think the transaction is made through a broker in Toronto.

Mr. BASFORD: I disagree with this section in principle. I think the federal government should be exercising far more control than it is already instead of going away from it.

The CHAIRMAN: You will be allowed to formally register your dissent, Mr. Basford, when we start calling the clauses.

Mr. LESAGE: I can tell you, Mr. Basford, that in changing that legislation we are only getting out of the field in appearance. As a matter of fact, we are remaining in the field in requiring the filing of an identical document to the prospectus. This document will have to be filed with the department exactly the same, but instead of requiring it as a condition seven days after the offer is made, it is 10 days after the prospectus is approved by the other jurisdiction, but the filing requirement is still there. We are relying to a certain extent on the provincial jurisdiction. We are keeping our hands in it at the same time.

Mr. BASFORD: I think we should not only remain in the field; we should start closing the gate to the field.

Mr. GREENE: Do you not think there is a contradiction in the fact that certainly at the federal level we are apparently trying very hard to encourage participation in Canadian equities—I think the Minister of Finance has stressed this very strongly—while, at the same time, instead of making the game more open, more even, more fair, more understandable, to the average person purchasing stock, we have taken no steps in the revision of the Companies Act which is certainly necessary if we are going to work together with the Minister of Finance on the idea that there should be greater participation in Canadian equities by the average Canadian citizen. We have taken no steps to make the game fairer, more even and more palatable. Are we not working in two different directions?

Mr. LESAGE: No, we are not working in a different direction at all. We are not taking off anything. You say if the provincial requirements are going further than the federal one at the moment then you will not have to comply strictly to make a duplication of work and comply strictly with the provisions of the Companies Act. But if you are not, then we will ask you to comply at least with what we have in the Companies Act. We are not working in opposite directions as the Minister of Finance has indicated. Far from it. The effect which appears to be there is only an appearance, I say, of closing the door. As a matter of fact, it is opening the door wider. If it were to have the effect in each and every case of closing the door, then we would come into the picture and say in this respect that at least the federal standard that we have at the moment should obtain.

Mr. MOREAU: It seems to me there is a constitutional problem here in that unlike the United States, where they have a securities and exchange commission which prohibits the selling of shares between states without complying with the law, we cannot do that and if we were attempting to close the door, as I think Mr. Basford has suggested, we would simply drift away from the Companies Act into provincial charters. This would not prevent the very thing that we want to prevent in any case because they would simply follow a provincial charter and they would still be able to sell stock in other jurisdictions.

Mr. LESAGE: That is right.

Mr. GELBER: Mr. Moreau says we do not have the right to regulate securities on an interprovincial basis, that the Americans have. How do we know we have not the right? Have we tested it?

Mr. LESAGE: That is a matter on which I would prefer not to comment. It is not in the bill.

Mr. GELBER: I think it is very important.

Mr. LESAGE: Yes it is very important. Mr. Gelber, you are asking me a question on a matter of principle. The most I could give you is a personal opinion and I wonder, as a civil servant, if I could give a personal opinion on something which is not directly before this committee, unless I were to ask for protection for what I am going to say. I do not want to be put on the spot for expressing views which might be different from that of the cabinet.

Mr. GELBER: I am asking Mr. Lesage if it has ever been tested in the courts and if Mr. Lesage feels that he cannot answer, I do not think he should be pressed to, but I think perhaps we should have someone who is prepared to.

The CHAIRMAN: I think what Mr. Lesage says, is he understands your question but he is not speaking for the Department of Justice. He is not giving any policy. What is your question, Mr. Gelber?

Mr. GELBER: I would like to know whether the question of the right of the federal government to regulate the distribution and sale of securities between provinces has ever been tested in law?

The CHAIRMAN: Do you know if it has or has not?

Mr. LESAGE: I have never personally heard of a specific court case on this precise subject.

Mr. MOREAU: You do not care to comment either. Do you think there is a constitutional bar? Do you feel that under the B.N.A. Act—

The CHAIRMAN: I do not think he should be qualified to answer that question. He would be expressing a legal opinion, which would not be fair to the witness. I think we should follow through with Mr. Gelber.

Mr. GELBER: Now I sympathize with Mr. Basford's position in this matter, Mr. Chairman. I understand, Mr. Lesage, that under property and civil rights, the provinces have their authority to issue charters and regulate corporations. What gives us the right to have the Companies Act as a federal authority?

Mr. LESAGE: The origin of the federal authority can be found in the royal commissions appointed by the Governor General from time to time. The origin of the authority is vested in the person of the sovereign. This power can be and has been exercised in the past by our Governor General and in 1869 for the first time parliament enacted a Companies Act which was predicated, as I understand it, on this royal authority to issue charters or letters patent.

There is also the constitutional aspect of section 91 on trade and commerce which covers most of the cases of trade and commerce for the good of Canada and this covers, I would say, 95 per cent of the companies which are incorporating. In some other fields where there is a specific federal authority under the B.N.A. Act then the authority of the Governor General is being transferred down for administrative purposes to the Secretary of State under his seal of office. It is so bad that even in some provinces the authority to issue letters patent is still vested in the Lieutenant Governor. Take, for instance in Quebec, the letters patent under the Companies Act are still issued under the seal of the Lieutenant Governor and not under the seal of the provincial secretary. But for administrative purposes the federal authority has transferred this authority from the Governor General to the Secretary of State. I think that is, in a very few words and very simplified, the history of the authority of the federal government to issue letters patent and to incorporate companies.

Mr. GELBER: The Governor General can issue a charter for any purpose whatsoever. Is that correct?

Mr. LESAGE: No.

Mr. GELBER: What are the restrictions?

Mr. LESAGE: I think the restriction is well expressed in section 5 of the Companies Act:

The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than three, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the parliament of Canada extends, except the construction and working of railways within Canada or of telegraph or telephone lines within Canada—

I think I cannot put it in any better words.

Mr. GELBER: When people decide whether they want a provincial or federal charter they are limited then by the authority of the federal government, is that correct?

Mr. LESAGE: Pardon me, please, Mr. Gelber.

Mr. GELBER: I have a feeling that people who are deciding whether they want a provincial or federal charter, do not seem to be restricted when they apply by considerations of limitations of the authority of the federal government. They decide which is going to be more useful.

Mr. LESAGE: Yes.

Mr. GELBER: They apply for a federal charter if they think it will be more useful than a provincial charter. There does not seem to be any limitation in their considerations.

Mr. LESAGE: If the field was considered entirely and exclusively provincial we could not issue letters patent for that particular field. You may find some example of this in education. We would not have authority to issue letters patent to a group of persons who would like to carry on a company to dispense public education, I would say.

Let us take a clear-cut case on the primary level.

Mr. GELBER: Well, in normal commerce and business do you refuse to issue charters to people who want to carry on commercial enterprises in Canada because of lack of authority?

Mr. LESAGE: No. We refuse in specific cases because they are out of the jurisdiction of the department only. We do refuse in cases of loans, insurance, telephone and telegraph companies. We have no jurisdiction on pipe lines. We have no jurisdiction there because of other statutes, federal statutes; we definitely have no jurisdiction. We have, of course, in some letters patent, in a few instances, secondary powers which would be borderline cases; whether there is sufficient insurance elements in its objects to classify that company as an insurance company or a loan company.

Mr. GELBER: Now there are in existence in Canada many thousands and thousands of corporations and while in certain areas you would refuse to grant a charter by reason of jurisdiction, I assume that most of those charters could just as easily have been granted on a federal as on a provincial basis?

Mr. LESAGE: May I have some examples of that?

Mr. GELBER: People carrying on business in a commercial place could just as easily have had federal as provincial charters and I think most of the charters would relate to that type of enterprise.

Mr. LESAGE: I do not see any example at the moment where we would have refused incorporation.

Mr. GELBER: This is right and therefore, for all intents and purposes, most people could just as easily get a federal as a provincial charter.

Mr. LESAGE: Almost, but for some reasons it is more convenient to have a provincial charter. Take, for instance, where a company has to get a licence in mortmain for some construction companies it is more convenient to operate under a provincial charter; because some provinces make such a link between a mortmain and the granting of powers to companies that it is more convenient to ask for a provincial charter. You have other instances where more specific and adequate legislation is provided for mining companies. Mining companies operate almost by necessity within one province and those mining companies prefer to take advantage of provincial legislation on mines. That is the reason why we have so few mining companies incorporated under the federal jurisdiction.

Mr. GELBER: That answers my question. I just wanted to establish that the distinctions are not quite clear.

The CHAIRMAN: I apologize for interrupting, but a suggestion was put forth by Mr. Lambert at the last meeting that we sit during the sittings of the house. We still have a number of sections to cover yet and time is of the essence. I wonder if it would meet with the approval of the committee that we do sit while the house is sitting.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Could I have a motion?

Mr. MOREAU: I so move.

Mr. CHRÉTIEN: I second the motion.

The CHAIRMAN: Do you wish to sit this afternoon? We could sit on a day when the house is not sitting. Mr. Lesage feels that we are going to move much more quickly in the latter part of the bill. We could try another day, probably tomorrow afternoon. We will sit tomorrow afternoon at 3.30 or after orders of the day, whichever is better.

Mr. BASFORD: I have a question. In section 76A page 18 line 33, where the words:

whether or not the particular offer to the public of the securities of the company in that province or country may by the laws thereof be made without the filing of a prospectus or document of a similar nature...

Mr. LESAGE: It covers the cases where there would be an exemption in any case, but the application of this exemption does not override the general rule that the authority of the government will still be there to require a prospectus in any event. If they are exempted provincially they have not, as a general rule, to file unless we would, under our other authority, ask specifically. There are some cases where no one is interested and they are exempted by provincial authority. So, if they are exempt, the rule will be that they are exempted unless we come and ask for it. This is not putting the Companies Act as I feel you fear, entirely under the exceptions of other jurisdictions.

Mr. CHRÉTIEN: I have two or three questions in French.

(Translation)

You mentioned a while ago that charters were sometimes refused for jurisdictional purposes. Does that happen often?

Mr. LESAGE: It does happen but not very frequently.

Mr. CHRÉTIEN: On what basis do you determine federal or provincial jurisdiction?

Mr. LESAGE: On the basis of section 5, if the Act formally forbids it; the other, of course comes under the province. Then, in most cases where a doubt exists, applicants are required to submit an amended application and we tell them why we have doubts about such and such an item. We nearly always come to an understanding and the applicants realize that it would be better if they applied to the provincial authorities. But as to our categorically refusing applications, it happens extremely rarely.

Mr. CHRÉTIEN: Mr. Lesage, are you aware of a certain decision handed down by the courts, which, it would seem, cancelled or stated that the existence of companies was invalid for lack of jurisdiction.

Mr. LESAGE: No.

Mr. CHRÉTIEN: Thank you.

(Text)

Mr. BASFORD: I am sorry to be so long on this, but I do not see that the section corresponds with the explanatory notes.

Mr. LESAGE: That may well be.

Mr. BASFORD: The explanatory note is very detailed and comprehensive where it says the requirement of the act is only where a company makes an offer to the public of its securities in any province or any foreign country wherein it is a general requirement of law. It certainly does not specify in subsection (1) in very great detail what the provincial laws must require. It just says a prospectus. It does not say what the prospectus must contain.

Mr. LESAGE: No.

Mr. MOREAU: The security commissions in the provinces do.

Mr. LESAGE: We would have no intention or no jurisdiction to legislate on what the provinces should do or not do.

Mr. BASFORD: But if you are going to allow companies to be exempted under the federal law, if there are certain provincial requirements for the issuing and sale of stock, surely you can legislate the minimum requirements of those provincial laws which would entitle the company to exemptions.

Mr. LESAGE: I wonder if it is necessary.

Mr. BASFORD: Well, I was just asking.

Mr. LESAGE: I do not see any necessity for that because those laws are not foreign laws, they are provincial laws and even if you have a few foreign laws, these cases of non-filing would, if they would come to our attention, that a company has used this provincial authority not to file and to sell its securities to the public without filing, then if we have a complaint in the department we can very well look into that complaint and ask for a prospectus being filed in the department under our general provisions. I do not see any practical problem there.

Mr. MOREAU: In other words you are allowed to exclude or waive the provision of filing providing you are satisfied that they are within that jurisdiction? I think the provisions are at least that strict.

Mr. LESAGE: Yes, but even if they are not sufficiently strict then we will intervene.

Mr. BASFORD: I think our difficulty is that you place a higher value on provincial securities commissioners than I do.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): If you dealt with them in Quebec or Ontario, they are dealt with differently.

Mr. MOREAU: That would speak very highly of British Columbia.

Mr. LESAGE: It will certainly be an improvement because there are no federal security commissions. There was no authority to look into the prospectuses they were filed in the department for the convenience of the public and we will be filing at least an equal document which is still going to be there as it was before for the protection of the public and so we are not weakening our position; on the contrary. We may in appearance rely on provincial securities but what we are asking before was even less. We were creating, I would say, procedural problems on those matters and delays of seven days in Ottawa, of all those delays that companies had to rush the lawyers to Ottawa for approval of the prospectus, rush to the securities commission before they can go on the market and coming into the office at the very last moment—that is all right—you may go on the market. That is duplication of unnecessary procedure. That is what we want to avoid but not the substance; the substance remains at least unchanged. But for the procedure, we are much easier on the procedures to help the companies go on the market. It is a matter of procedure, more than a matter of substance.

Mr. GELBER: I move that the meeting adjourn.

The CHAIRMAN: Very well. The meeting will be adjourned until tomorrow afternoon after the orders of the day or at 3.30 p.m.

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(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964-65

CANADA
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STANDING COMMITTEE
ON
BANKING AND COMMERCE

(Chairman: LAWRENCE T. PENNELL, ESQ)

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 17

(THURSDAY, MARCH 4, 1965)

Respecting
Bill S-22, An Act to amend the Companies Act.

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch,
Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.

and Messrs.

Aiken	Grafftey	Moreau
Armstrong	Gray	Mullally
Asselin (<i>Notre-Dame-de-Grâce</i>)	Grégoire	Nowlan
Basford	Greene	Nugent
Bell	Habel	Otto
Blouin	Hales	Pascoe
Cameron (<i>High Park</i>)	Jones (Mrs.)	Rynard
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Kelly	Scott
Caouette	Kindt	Skoreyko
Chrétien	Klein	Tardif
Côté (<i>Chicoutimi</i>)	Lambert	Thomas
Douglas	Leblanc	Vincent
Frenette	Lloyd	Wahn
Flemming (<i>Victoria-Carleton</i>)	Macaluso	Watson (<i>Châteauguay-Huntingdon-Laprairie</i>)
Gelber	Mackasey	Woolliams—50.
	McCutcheon	
	McNulty	
	More	

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, March 4, 1965.
(22)

The Standing Committee on Banking and Commerce met at 9:30 a.m. this day, the meeting called for Wednesday, March 3, 1965, having been cancelled. The Chairman, Mr. Pennell, presided.

Members present: Messrs. Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Gelber, Gendron, Habel, Lambert, Leblanc, Mackasey, McCutcheon, McNulty, Moreau, Pennell and Tardif (13).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

Copies of an additional proposed amendment and of the letter from Professor Williamson, referred to at the previous meeting, were distributed to the members.

Mr. Lesage explained the purpose of Clause 34 to 39 inclusive, and was questioned.

At 10:30 a.m. the Committee adjourned until Friday, March 5, 1965, at 9:30 a.m.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

THURSDAY, March 4, 1965.

The CHAIRMAN: I am pleased to see a quorum. I believe we were on clause 34, page 20, and I presume members of the committee have a copy of the letter received from Professor Williamson. I should add that he was sent a copy of the act as amended and also a copy of the further amendment. You will notice his remark: "If it would be of any help to the committee I would be willing to appear before it if it can be arranged not to conflict with my class." Before you make a decision you might like to hear Mr. Lesage's reply to Mr. Williamson's comments.

Have we come to the clauses on which he comments?

Mr. LOUIS LESAGE, Q.C. (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): No.

The CHAIRMAN: We will just carry on for the time being in the ordinary order and then come back to Mr. Williamson's comments.

Mr. MOREAU: Perhaps it would be better to make that decision while we have a quorum present.

Mr. MACKASEY: I have to leave, Mr. Chairman; I have no choice.

The CHAIRMAN: We shall continue and then come back and deal with Mr. Williamson's comments later if it is agreeable to the committee.

Some hon. MEMBERS: Agreed.

Mr. LESAGE: Mr. Chairman, clause 34 is, I would say, a minor amendment which keeps the minimum number of directors on the board. It requires at least three. The words "however designated" have been added in paragraph (1) of section 84 to cover the cases mostly of corporations without share capital where the directors are referred to as governors or administrators and so on. This is the reason for the addition of the word "designated". I do not believe this is an amendment of major substance.

Clause 35 is an amendment to bring our Companies Act in line with the draft Uniform Companies Act and also the Ontario Companies Act and some other new legislation which permits the appointment as a director of a person who is not a shareholder, and it imposes upon such a person an obligation to become a shareholder within 10 days.

Mr. LAMBERT: In this connection, Mr. Chairman, what consideration is given to following the provisions of the Alberta Companies Act which permits a director to hold office without being a shareholder. This is often the case where there are legal requirements whereby a solicitor may act as the secretary of the company without actually owning shares. In some instances, as we know, the requirements for shareholding is merely proforma because there is a trust agreement behind the shareholding and, in any event, the solicitor director is in no way the beneficial owner of the shares.

Mr. GELBER: Are we talking about officers or directors?

Mr. LESAGE: Directors.

Mr. LAMBERT: Officers and directors.

Mr. GELBER: In New York state I do not think you have to be a shareholder.

Mr. LESAGE: That is right, Mr. Lambert. This problem was studied in the Senate. It was decided there that it was better to keep with the system of qualifying the director as a shareholder for the very reason that it is only a matter of procedure. A company always has in its treasury an odd share to qualify the new director. The Senate preferred to keep that system. They found it more practical to permit the appointment of a director, while he is not a shareholder but thereafter they felt they should keep with that principle that the director should be a shareholder.

Mr. MOREAU: Does it accomplish anything? I know of a case under the Ontario act where, in spite of being a registered shareholder, a man was re-elected a director when he was 40,000 shares short, at least in street certificates. I wonder how effective that section is?

Mr. LAMBERT: My own view, Mr. Chairman, is that it is a question of judgment. I think that the Alberta act in this regard is more flexible. It does not require you to go behind the setting of this sort of trust agreement on a share. It should be permitted within the memorandum of the association or the articles of the company to so provide. But, I am not going to make anything of this. I will indicate my preference and it would really be to conform with the Alberta Companies Act.

Mr. LESAGE: Mr. Lambert, I think the system that you propose has very great merits. However, what was considered was the possibility of maintaining the principle that those who are taking care of the administration of the money of other shareholders be themselves interested. I understand it is only a matter of principle that they want to save there and it is for the sake of the principle that this procedure has been maintained. I think at this moment I have to say what is the stand that has been taken by the Senate and approved by the government.

Mr. LAMBERT: You agree though that you could drive a 48 passenger bus through the principle of this clause?

Mr. LESAGE: Yes. This is not, I would say, of very major importance in corporate law. It is a matter of convenience.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you think it would increase the tender regard of the directors for the welfare of the shareholders, Mr. Lesage?

Mr. LESAGE: Clause 36, subsection (3) of section 87 is amended to delete from the act the obligation for companies to publish a copy of the bylaw in the *Canada Gazette*. The bylaw changing the number of directors is not a bylaw which must be known to everyone in this country but only to interested persons and we have kept the procedure of the filing of the bylaw in the Department of the Secretary of State and added the words, "such copy shall be open for inspection, without fee, during normal office hours." We had received some remarks in the department that this was a costly procedure of publishing in the *Canada Gazette* a copy of the bylaw, that this was not necessary and was not adding any protection to anyone to know whether the company has six or seven directors.

Mr. MOREAU: The bylaws referred to in subsection (3) only refer to changes—

Mr. LESAGE: —in the number of directors only. When we studied the matter of the change of the location of the head office of the company we maintained the policy of publishing in the *Canada Gazette* because it is of public interest to know where the head office of the company is and where service can be made.

Section 98 of clause 37, is an amendment regarding the disclosure of the purchase of securities by the directors or officers of the company and this

gives them responsibility of disclosing their dealings in the shares of the company.

Mr. GELBER: Mr. Chairman, I just glanced at this. That would mean that where an individual has a corporate entity in which he is the sole beneficial owner he still will have to go through this procedure despite the fact that no one else has a beneficial interest in this transaction. Is that correct?

Mr. LESAGE: Yes, but the procedure is simple; he merely has to disclose to himself.

Mr. GELBER: Yes, but if he is the sole beneficial owner—I notice that under the penalty clause, for instance, if he fails to comply with the procedure, he is guilty of an offence and liable under summary conviction to a fine not exceeding \$1,000 or to six months imprisonment or to both. Yet he is the sole beneficial owner and no one else is concerned.

Mr. MOREAU: How can he be? There must be at least two others. There is a provision for two qualifying shares.

Mr. GELBER: I said "beneficial owner." He can be the sole beneficial owner; the others could be nominal shareholders.

Mr. LESAGE: Who would be interested in launching a prosecution?

Mr. GELBER: I do not think that is the answer, Mr. Lesage. You are saying he can break the law and no one else will be interested in the proceedings. Why should he be put in the position of breaking the law if he is the sole beneficial owner?

Mr. LESAGE: I wonder if he can really be in the position of breaking the law, because being the only beneficial owner when he holds the annual meeting he discloses to himself and to the nominees, who are usually two of his employees, and who are necessarily aware of the affairs of the company because those nominees are his own employees.

Mr. MOREAU: He only has to furnish this information to the secretary.

Mr. GELBER: But you are asking him to file a return on this.

Mr. MOREAU: To the secretary.

Mr. LESAGE: To the secretary, yes.

Mr. MOREAU: This is not a securities commission procedure.

Mr. GELBER: It seems to me that we are involving people in a lot of procedures in corporations where there is only one beneficial owner. According to what you say, Mr. Lesage, we are encouraging people to talk to themselves—under penalty if they do not, of \$1,000.

Mr. LESAGE: Yes.

Mr. LAMBERT: I find this a most remarkable section, if I might say so. First of all, the upgrading of the ownership reporting from once a year to within one month of the transaction. Then secondly, there is the penalty. Why, under these circumstances, is it an indication of a personal offence? The returns are deemed to be filed by the company, not by the individual.

Mr. LESAGE: Oh, no.

Mr. LAMBERT: May I continue? It is the responsibility of the company. It is the company that is registered with the secretary of state. It is not the individual therein. If there is to be a disability under clause 3, there should be a disability imposed upon the company, such as one that fails to file its annual return. It is the company that is in default and therefore it puts its actions in jeopardy as you do when a company is in default for failure to file such returns.

Under the Alberta Companies Act the annual return, Form 21, will include a record of the transactions with the shares of the company during that year.

If there is a failure to file within the specified time the company is noted in default. Of course its actions are then subject to attack. It cannot, for instance, launch an action in a court of law. It cannot file a statement of defence in a court of law unless it regularizes its position and I would have thought that a similar type of penalty should apply here. The responsibility vis à vis the companies act or the corporations act is that of the company, not of the individual.

Mr. MOREAU: Mr. Chairman, I gather this section was designed to give a company some power to get at the problem of insider trading, I think most security commissions now require disclosure of insider trading. But, can a company comply with the securities exchange regulations in advising the securities commission on insider trading if they have not been given some sort of teeth to get at the information? I do not know where this comes from, but it probably comes from the Ontario act.

Mr. LESAGE: Exactly.

Mr. MOREAU: And it is a sort of a parallel to what is being done in most securities commissions in the provinces in order to get at the problem of insider trading. I would think it is a very good section, and I think the onus should be on the directors to report their trading.

We were discussing a problem a moment ago. I thought it was ludicrous that you can get a director of a company being re-elected as a director when he is 40,000 shares short. I feel this is the kind of problem that we have to overcome and this section takes part of the step at least in order to give the companies the information for the securities commissions and exchange commissions in the various provinces to get at the problem.

The CHAIRMAN: Mr. Gelber, you are next.

Mr. GELBER: I would like to deal with the whole matter but I would also like to deal with the point that Mr. Moreau made a few moments ago, when he said it only has to be filed with the secretary of the company. Actually you will note at the top of page 21 the words: "within 30 days of the receipt by him, furnished to the secretary of state a copy of each such statement." So it does involve the secretary of state. Personally I am sympathetic to what Mr. Moreau has said and I think there is a very important principle in this clause. However, Mr. Moreau is thinking about people in industry in which he is an active and distinguished member, but I am interested in the entire implications of this to corporations that are not public corporations and corporations which are single beneficial owners, and I suspect, Mr. Chairman, that in the total of corporate entities in this country—they are not public companies. They are not companies with a lot of shareholders, but they are closely held or single beneficial owner companies. Therefore, I am just wondering whether some qualification should not be introduced to say that this applies when there is a certain distribution of shares to deal with the very real problem which Mr. Moreau has in mind and which, undoubtedly, the framers of this clause had in mind. This has universal application, and I think it involves a lot of people in red tape even when there is no one concerned except themselves. That is the reaction which I want to put forward.

Mr. MOREAU: I have a very short question. Could a distinction be made in this section between public and private companies?

Mr. LESAGE: I have been giving a little thought to the distinction between public and private companies but, as you know some private companies are held by other companies and they are very closely held and it may well be that the transfers in the shares of those private companies might have a very great bearing on the other companies. If we are to make a distinction between public and private companies I am afraid we would lose control of some

so-called private companies which are in fact major companies. If the transactions are not reported I am afraid the purpose of the act would not be achieved. I fail to find any other possible basis for eliminating some of the small private companies which may be adversely affected by such a provision.

Mr. MOREAU: Would it not be possible for you to have a company with a single beneficial owner, that is a corporate owner, and to have the same problem as you indicated there as far as trying to exclude a single, totally owned subsidiary and a private company and a public company?

Mr. GELBER: I do not think that is insuperable, Mr. Chairman.

Mr. LAMBERT: I do not know whether they want to continue but I want to go into clause 3 again.

Mr. GELBER: You could exclude private companies. You were talking about shareholdings. You could exclude private companies but include companies where the shareholder of the corporate entity is a public company. That would solve your difficulty. I wonder if we could not leave this section until the end?

The CHAIRMAN: I am not asking for them to be carried at this stage. We will come back to that later. We are only having a discussion now. Are there any other questions?

Mr. LAMBERT: I look back to subsection (4) of the old section 98 which subsection (3) is replacing. This is a question of the offences and I am just wondering if there have been any prosecutions in this regard?

Mr. LESAGE: Not that I know of.

Mr. LAMBERT: Why have this type of penalty, because it is, shall we say, a rather drastic penalty, a fine up to \$1,000 or up to six months imprisonment or both. This is not just a light tap on the wrist by any means, at least potentially. I am just wondering why there should not be as well some responsibility placed or an alternative responsibility placed upon the company putting it in default for failure to comply. Now I am advancing that for your consideration and perhaps comment on some other occasion, Mr. Lesage. Remember, at this time the penalty is being extended to a shareholder reporting.

Mr. LESAGE: Yes.

Mr. LAMBERT: In the past it has been limited to the director. The whole of section 98 dealt with the actions of a director. You will recall that subsection (4) of the present section 98 says: "A man who speculates for his own account." Now you have done away with that in so far as the new section 98 is concerned. Now is it felt that there is no danger of a director speculating on his account? Why was this removed from the replacing clause?

Mr. LESAGE: I cannot remember that part. I think if it has been removed it is because other legislation has been copied there.

Mr. LAMBERT: I see. This is out of the Ontario act more or less.

Mr. LESAGE: The draft uniform act and the Ontario act were considered at that time and, in so far as we are concerned in the department, you will appreciate that we have little direct interest in that section which concerns the internal management of a company.

Mr. LAMBERT: I do not know. I have an uneasy feeling about this. I hope that you do not have any unhappy experience arising from this clause.

Mr. GELBER: There is one aspect that concerns me about this. We require companies and corporations to have a certain form. We require them to have three directors and we say to them they can be nominees. The law does not say that but we are saying right here; "If you do not have enough directors, get nominees." Then we start putting penalties into the law. We say to the nominee; "You are obliged to have knowledge." What are we going to do

about estates being wound up? A person actually has no knowledge of the previous administration of a company and he has to sign papers to wind up an estate. He could not have knowledge really of all these matters. We are placing penalties into this act of such a nature. Now I am very much in agreement with Mr. Moreau's position but I think we have to be careful how we do it.

Mr. MOREAU: Mr. Chairman, on Mr. Lambert's point of speculation, would you not say, Mr. Lesage, that old section 98 virtually was unenforceable and it was perhaps beyond the ambit of the federal companies act jurisdiction in that you had no way of enforcing that section; you had no way of determining who was speculating and who was not. Would you not also say that this is a field perhaps of which the security commissions in the provinces have become increasingly aware and that actually they have been taking steps to correct it? I do not see that your department would have either very much jurisdiction or ability to cope with or enforce such a section. I just wondered if that was perhaps why you left it out.

Mr. LESAGE: If a case were submitted for enforcement, of course, our department as such would not intervene but would refer the matter to the Department of Justice. In so far as the department is concerned this section has no direct interest for the public generally. It might affect the rights of a few persons or a number of shareholders. If there is fraud this is the way to avoid it because then this section is there to make a prosecution possible. But that is the only purpose of a section like that. This is not to have a better administration of the act itself. I would say it is incidental to the general principles, but it is rather, as has been said, a matter for the security commissions.

Mr. MOREAU: Surely it is not being suggested that there had never been any speculation. It was simply that you had no means of determining this as far as I can gather.

Mr. LESAGE: It is not that we had no means. Rather it is that we had no complaints in our department. If we were to receive a complaint to that effect then we would have to ask the company for explanations and in most, if not all, of those similar cases when we asked for explanations we are given the explanation and we can satisfy the public. We have always been able to cope with those problems on the administrative level without having to refer to the courts of justice.

Mr. LESAGE: Clause 38 is a consequential amendment because of the deletion of section 59. It is now impossible for companies to create preferred shares by by-law. The text had to be changed. At present section 103 reads:

- (1) In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company,

This is also to give a measure of protection in order to avoid the possibility of a company, by by-law, depriving a class of shareholders of all voting rights. This would be in conflict with subsection 13 and subsection 14 of section 12 of the act.

Mr. LESAGE: Clause 39 covers a number of pages and continues to page 37. All those amendments are revisions of the financial statements section.

As I said at a previous meeting, the text we now have in the Companies Act comes from the 1908 Imperial Act. It was brought in in Canada in 1917 and has received very little amendment since.

What has been suggested as clause 39 was worked out in very close co-operation with the Canadian Institute of Chartered Accounts. We were following there the principles of accounting adopted by the draftsmen of the draft uniform companies act, and it follows the Ontario act to a great extent. In one

word, what has been done is to make a 1965 edition of the normal accounting practices. Everyone understands that the 1908 principles have varied considerably, and this accounts for the very important change in the Companies Act, but we have not gone any further than adopting the normal practices.

Mr. MOREAU: Mr. Lesage, I have a question to put. I have gone through this section very carefully and I have read the Senate proceedings. I am wondering where section 121F(2) comes from. In the Senate proceedings I saw no discussion of that section. I have gone through them quite carefully, but I have found no discussion at all on that. I wonder how or why it got there.

The CHAIRMAN: I do not want to interrupt you, but I think we should just go through these sections one at a time and when we reach 121F I will ask you to put your question again.

Mr. LESAGE: In section 120 we suggest a slight amendment as the result of a clerical error in the Senate.

Mr. GELBER: May I revert to section 117? What type of information could be withheld upon the authorization of the chief justice? I am referring to section 117 (1)(a). Would that be in connection with patents or something like that?

Mr. LESAGE: No. It refers to the amount of sales made by the company. They do not want to disclose their figures because their competitors may very well use those figures for their own advantage, and to the disadvantage of the company who publishes them. Authority is being given to a judge to determine whether or not there is a superior or public interest to be satisfied by having those figures disclosed.

Mr. GELBER: It would not be a public interest. There may be a pecuniary interest to the shareholders; but it would not be of public interest to disclose them.

Mr. LESAGE: That is why there is a provision permitting such disclosure with the permission of a judge.

Mr. MOREAU: This is parallel, Mr. Chairman, to section 121F and the point I was going to raise. I think the point was very well made in the Senate that the competitors are not the people to whom a company would not want to give information. The competitors know what are your sales in any event. I think that is a pretty valid point. I think we should be very careful about these exclusions from disclosure. That is my only reaction. The competitors, the people who are in the business, usually know exactly what you are doing and what your sales amount to.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I cannot really see that it does much good to know that people are selling there. It is just a fact of business. If it were a disclosure of how the sales were made or something of that kind, I could see some point in it, but I do think the shareholders should have an idea of how their company is doing.

Mr. GELBER: Could Mr. Lesage tell us if something of that sort exists in the present act and whether many such exclusions have been granted.

Mr. LESAGE: The procedure of giving authority to a judge to authorize the disclosure was not in the act as it is at the moment. The disclosure of sales as I see it is not a requirement under the act as is.

Mr. GELBER: I presume there is also a consideration of protecting a Canadian company against foreign competitors. It seems to me there must be some reason why this was introduced in this act and not included in the previous act.

Mr. LESAGE: It was because the extent of the disclosure in previous acts was not as broad as in this act.

Mr. LAMBERT: We have failed to note here that sections 117 to 121A do not apply to private companies. I am sure you do not require a private company to file a financial statement.

Mr. LESAGE: No.

Mr. LAMBERT: Therefore this does not arise in the case of private companies, and even if this exception will provide for withholding information from shareholders it is not applicable to private companies.

Mr. LESAGE: No.

Mr. LAMBERT: Therefore, if the shareholders of a private company want to know something they will know it, and the financial statement will disclose it.

Mr. LESAGE: Yes.

Mr. LAMBERT: It is only in the case of financial statements of private companies that there is this provision for a judge, in appropriate circumstances, to say that the statements shall be somewhat less than those normally required.

Mr. LESAGE: That is right.

Mr. MOREAU: Mr. Chairman, it seems to me it is a very important principle which has been introduced in this section. I think there is a very real danger in the view that a company can apply for exemption from giving information to its own shareholders because it could lead to abuse.

I am merely indicating at this time that I would like to look very closely at these sections before they pass, both 117A and 121F(2) to which I referred a moment ago which deals essentially with the same point.

The CHAIRMAN: You will raise that when we come to it. I am going through the sections now, Mr. Moreau. When questions ~~have~~ been exhausted on the earlier sections we will come to 121F and I will ask you to raise your point again.

Are there any more comments on section 117?

Mr. MOREAU: Only to the effect that I am likely to prepare an amendment or a deletion, Mr. Chairman.

Mr. GELBER: Mr. Lambert has kindly drawn to my attention section 116(4) which contains wording that could be applied. The wording here for penalties regarding transfers of shares is very appropriate.

...a private company that is not a subsidiary of a public company or a company incorporated otherwise than by or under an act of the parliament of Canada...

and so forth. That would satisfy me on the previous clause we were discussing.

The CHAIRMAN: Then you will raise this when I start calling the clauses.

Mr. GELBER: I think Mr. Lesage might want to consider this. Possibly the department might agree.

Mr. MOREAU: May I deal with this point in section 117A? Do you see any serious difficulty, Mr. Lesage, resulting in the deletion of the exclusion of disclosure of information to the shareholders on an application to the chief justice?

Mr. LESAGE: I think there the principle is disclosure. The exception is possible only with the permission of a judge. I think the fact that the company has to ask a judge for permission indicates that the company has to prove the necessity for the retention of the information.

Mr. MOREAU: Has anyone offered any argument to you in support of this section? Has anyone submitted to you that there should be absolute, so to speak?

Mr. LESAGE: This was discussed in a subcommittee of the Senate committee on banking and commerce when no reporters were present because we were sitting behind closed doors.

Mr. MOREAU: I went through it very carefully and I could not find it.

Mr. LESAGE: No, you would not find an explanation in those reports because they are the reports of the committee itself, not of the subcommittee. You will appreciate that the subcommittee dealing with the detailed study of the sections had to be very limited in the number of members because it is very difficult to work on such a text with a large committee.

Section 117A is good legislation, I think, because the protection is in the hands of the courts. When there is a doubt, we have to rely on our courts of justice in order to obviate any hardship on a company. The possibility of an exception was inserted in order that we should not be unfair to a company placed in certain circumstances. However, this exception would come into effect only after the company had proved to the satisfaction of a judge that the requirements should be dispensed with.

Mr. MOREAU: Can you give me one example showing why this should be necessary?

Mr. LESAGE: Not at the moment, but it would be up to the judge to decide on the merits of the particular case before him.

Mr. GELBER: It may be necessary in the national interest in the case of international competition.

Mr. LEBLANC: Mr. Lesage, do you not think it would take time to go to a judge for a ruling in this matter?

Mr. LESAGE: No.

Mr. LEBLANC: The cost would have to be borne by the company itself, and it might be considerable.

Mr. LESAGE: Mr. Leblanc, all these procedures are summary procedures before a judge in chambers. There is no appeal whatsoever because the judge is not sitting as a court but as the designated person. He decides who should be called to express their objections to the motion which will have to be presented in chambers, and I think it may be a matter of days before a judgment is rendered. It is not a case which is subject to appeal and so on; it is a very summary procedure.

Mr. MOREAU: Application could be made long before the annual meeting.

Mr. LESAGE: Yes.

Mr. MOREAU: It seems to me, Mr. Lesage, that a very dangerous possibility is being introduced and the door which many security commissions have been trying to close is being opened to insider trading. I think it is a very dangerous principle to introduce, and I would certainly like to have one example at least showing why we should introduce this provision.

Mr. LAMBERT: I can see the degree of flexibility that is wanted because by the elimination of this one possibility companies could be completely cornered. I can assure you that any chief justice or any justice of a court in a province would have to be really persuaded before he would grant such an application. I think it would be a very tough procedure, but it is one that is necessary.

Mr. MOREAU: Have you one example to show why it is necessary?

Mr. LAMBERT: I would say that a chief justice would be tougher than any securities commission.

Mr. MOREAU: Can you give me any example showing why it should be needed? It eludes me.

Mr. LAMBERT: Yes, I think of a situation in which we are engaged in hostilities. If information on gross sales of certain types of products were to be given it may lead to undesirable disclosure to hostile nations.

Mr. MOREAU: But surely in that type of situation special measures would be enacted.

Mr. LAMBERT: I would say that would be strictly ad hoc. A company would then have to come running to the government and would have to move the whole of the government machinery to get a provision under a special war measures act to exempt them from the absolute disclosure which would be imposed upon them by the Companies Act.

I can see the necessity for this. However, let me assure you that a chief justice would be as tough as if not tougher than any securities commission. I do see the value of this type of provision.

The CHAIRMAN: If there is no more discussion on section 117 I will proceed to 118.

Mr. GELBER: Mr. Chairman, in the earlier section which deals with the whole matter we make a distinction between a public and a private company. Where is the distinction made earlier in the act? Where is it defined?

Mr. LESAGE: It is defined in 3(j) and (k).

The CHAIRMAN: In the act itself?

Mr. LESAGE: It is in section 3 subsection (j) and (k) of the act itself.

The CHAIRMAN: Subsection (j) defines a private company but I think Mr. Gelber wants to know how we determine, whether we are referring to private or to public companies.

Mr. LESAGE: It is in the act itself.

The CHAIRMAN: How do we know when we are dealing with the amendments whether it is a public or a private company?

Mr. LESAGE: That is contained in section 121E on page 34 of the bill, which requires disclosure to the shareholders. That is in 121E and 121F.

The CHAIRMAN: I thought Mr. Gelber asked how do we know when we are dealing with private or public companies in the amendment.

Mr. MOREAU: He wants a definition.

The CHAIRMAN: No, he did not want the definition; he just wanted to know whether we are dealing with public or private companies when we are dealing with the amendments.

Mr. GELBER: Yes. We do know from section 116 paragraph 4. Private companies are not required to supply all this information. Sections 117 to 121A do not apply to private companies.

Mr. LESAGE: They do apply to private companies.

Mr. LAMBERT: But their shareholders may waive the requirement.

The CHAIRMAN: That is a point I am trying to clear for you, Mr. Gelber.

Mr. MOREAU: Subsection 4.

Mr. LESAGE: This is an exception for private companies because those sections normally apply.

Mr. MOREAU: But if the shareholders waive that right—

Mr. LESAGE: They can waive that right because in some very small companies many of the requirements would not apply.

Mr. GELBER: I would like you to consider excluding completely companies with a sole beneficial owner when we bring in an amendment. I think we should eliminate the red tape.

Mr. LESAGE: Oh, no.

Mr. LAMBERT: With respect, I think Mr. Gelber is asking us to go much too far.

Mr. LESAGE: Yes, that would be going much too far.

Mr. LAMBERT: This is precisely what we are trying to get at.

Mr. GELBER: No, I do not think so. I am referring to a sole beneficial owner, and to a case in which the owner is not a public company.

Mr. MOREAU: Section 116(4) says:

with the consent in writing of all shareholders, a private company that is not a subsidiary of a public company or a company incorporated otherwise than by or under an act of parliament...

Mr. GELBER: That is right, but they have to obtain written permission.

Mr. MOREAU: From the shareholders.

Mr. GELBER: I am suggesting that where there is no interest involved except the individual himself we should eliminate as much red tape as possible. We should not require companies to pile paper on paper on paper where no other interest whatsoever is involved.

The CHAIRMAN: This might be a good place to pause. I have to apologize to the committee because I have a commitment which cannot be broken.

With the permission of the committee we will meet at 9.30 tomorrow. The clerk will send out the notices.

Mr. GELBER: I move adjournment, Mr. Chairman.

(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964-1965

STANDING COMMITTEE

ON

ANADA.

BANKING AND COMMERCE,

(Chairman: LAWRENCE T. PENNELL, Esq.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 18

(FRIDAY, MARCH 5, 1965)

Respecting

(Bill S-22, An Act to amend the Companies Act.)

WITNESS:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch,
Department of the Secretary of State.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

STANDING COMMITTEE
ON
BANKING AND COMMERCE

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Vice-Chairman: R. Gendron, Esq.

and Messrs.

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Armstrong	Gray	Moreau
Asselin (<i>Notre-Dame- de-Grâce</i>)	Grégoire	Mullally
Basford	Greene	Nowlan
Bell	Habel	Nugent
Blouin	Hales	Otto
Cameron (<i>High Park</i>)	Jones (Mrs.)	Pascoe
Cameron (<i>Nanaimo- Cowichan-The Islands</i>)	Kelly	Rynard
Caouette	Kindt	Scott
Chrétien	Klein	Skoreyko
Côté (<i>Chicoutimi</i>)	Lambert	Tardif
Douglas	Leblanc	Thomas
Frenette	Lloyd	Vincent
Flemming (<i>Victoria- Carleton</i>)	Macaluso	Wahn
Gelber	Mackasey	Watson (<i>Châteauguay- Huntingdon-Laprairie</i>)
	McCutcheon,	Woolliams—50.
	McNulty	

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, March 5, 1965
(23)

The Standing Committee on Banking and Commerce met at 9:40 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Chrétien, Gray, Greene, Habel, Klein, Leblanc, Macaluso, Moreau, Nowlan, Pennell (10).

In attendance: Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

Mr. Lesage continued his explanation of Clause 39, and was questioned.

At 10:00 a.m. the Committee adjourned until 9:00 a.m., Tuesday, March 9, 1965.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, March 5, 1965

The CHAIRMAN: Gentlemen, we will proceed informally and then if sufficient members come I will formally call the meeting to order.

As I recall, when we adjourned we were dealing with section 117 in clause 39 at page 23. Mr. Moreau put the last question and I do not know whether or not there are any further questions in respect of this section.

Mr. MOREAU: Mr. Chairman I may have some amendments to propose on this section when we again go through the clauses.

The CHAIRMAN: We will then proceed to sections 118, 119, 120 and 121.

Mr. MOREAU: Mr. Chairman, if you take that clause in its entirety the same arguments apply to section 121F.

The CHAIRMAN: Are there any questions on section 121F, at page 34?

Mr. MOREAU: Subsection (2) of section 121F states that documents filed with the department of the Secretary of State shall not be open for public inspection except upon the written direction of the Secretary of State. I cannot think of a reason for that being there. I think we explored this argument the last time we met.

Mr. LOUIS LESAGE, Q.C., (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): We have not explored it as yet.

Mr. MOREAU: Well, a very similar argument could be put forward.

Mr. LESAGE: No, I have not said a word on that problem to date.

Mr. MOREAU: Then perhaps we could hear from you in that regard.

The CHAIRMAN: Mr. Lesage, would you like to make a few remarks on this subsection?

Mr. LESAGE: This section appears to be an extraordinary one. It is rather difficult to explain the theory behind this section without approaching the general subject of disclosure of companies' financial information.

Before giving that explanation I would like to make clear that I have no intention whatsoever of making any statement which would have any bearing on the general policy because I am not qualified for that purpose; and I think that the problem of disclosure is different from the one we have in section 121F in substance although, in appearance, it has some resemblance.

In looking at this problem, first, we must note the definitions of a private and public company. In my opinion the word "public" as used in the Companies Act has been misleading in many instances. When we are speaking within the context of the Companies Act a public company is one defined in section 3, subsections (j) and (k). I do not think that we have to limit the meaning of the word "public" to that of the act. As you know, all corporations may be divided into public corporations or private corporations. Examples of public corporations are municipalities, school boards and so on. In law these usually are referred to as public corporations. But, when we have companies operated with share capital subscribed by individuals or other companies, in law, we call these private corporations. Within the so called private corporations you have the companies falling under the Companies Act. Only for the purpose of the Companies Act itself have they used the words "public" and "private" to make a distinction between the two types of companies and within that meaning the word "public" has not at all the same meaning. It is public only

in that it has a right to offer its shares to the public, as set out in the definition, and is an exception to the general rule of privacy of the private affairs of persons and companies.

For the greater protection of the public and for greater interest these companies, having a right to offer their shares to the public, have an obligation to file prospectuses disclosing all the affairs of the company. It is only within that meaning that those companies are public; otherwise, they are private corporations as opposed to government agencies like, as I said a few minutes ago, municipalities and school boards.

I have told you that an exception has been made by the prospectuses section because of the greater interest. Many people have in mind that it would be to the public interest if some of those companies falling under the category of private corporations also would have to disclose their affairs and financial positions. This is a matter of policy and of principal and, as a civil servant, I cannot express any views whether or not I would favour such a system or whether or not I would be against such a system. This is a matter of high policy for the government and I do not feel qualified to discuss that. But, we do not need to discuss public disclosure in order to explain subsection (2) of section 121F of the act.

Mr. MOREAU: Mr. Chairman, I have two questions with regard to section 121F and section 117. I note that the information is going to be withheld from the shareholders at the annual meeting on an application to a judge and so on. This is one thing. We have the positions reversed in section 121F in the sense that the Secretary of State must get permission to make public certain information required to be filed under the Companies Act.

Now, first, I would like to know where this section comes from and, second, after reading the Senate banking and commerce committee's reports I find absolutely no discussion of this section. As you say, it is a very important principle. I find it very strange that we have not had some discussion on it. I thought it would have been at least discussed in the Senate committee or that some arguments would have been put forward for having this. I cannot think of a reason this should be necessary. As I say, I would like to know where it comes from and how such a very important principle with regard to an exclusion of this kind got into this bill.

Mr. LESAGE: In so far as the discussion in the Senate is concerned, I indicated yesterday that the Senate banking and commerce committee set up a subcommittee and that that subcommittee, behind closed doors, without the assistance of a reporter, discussed these matters. This is the reason that the information is not published. But, I cannot tell you exactly or precisely the origin of this section or subsection, although I know the reasons for it. I will explain that to you because, as I said before, this bill started in the department and then it was sent to an interdepartmental committee, which had the assistance of outsiders. When the subcommittee finished with it this subsection appeared. With regard to the principles outlined—and this is the major question—we can explain it as follows. As a general rule, private corporations's affairs are private. This is true not only for the Companies Act now before this committee but also for the ten other companies acts in existence throughout Canada.

Mr. MOREAU: I appreciate that.

Mr. LESAGE: There are 11 jurisdictions. The only jurisdiction which receives a copy of the financial statements of the companies is our jurisdiction. None of the provinces have provisions for filing financial statements.

Mr. MOREAU: That applies, Mr. Lesage, to private companies, but this section covers public companies.

Mr. LESAGE: That is right. Even in the provinces you do not have similar provisions of disclosure for public companies. I have offered to explain why

the department comes into possession of those financial statements. I would say it is merely incidental to another procedure. Section 121 requires the company to send to the shareholders a copy of the financial statements at least 14 days prior to the annual meeting. To make sure the shareholders are protected, the Companies Act requires from an official of the company, generally the secretary of the company, an affidavit which must go to the department establishing that the financial statements have been mailed to the shareholders as required by the act. Attached to that affidavit is a copy of the financial statement. This is to make sure that the copy which is delivered to the shareholders is a true copy; the same copy is received in the department.

Originally those financial statements were received in the department for the protection of the shareholders only; and that is still the theory behind the Companies Act. Therefore, if we start from that point, the drafters of the bill have in no way changed the policy or the philosophy behind this act. They have only given a measure of further protection to the shareholders and to the company to ensure there will be no leakage of information from the department of the Secretary of State. This was introduced only to ensure the secrecy of government files.

Continuing from that point, the drafters had also to consider the very important fact that the federal jurisdiction is only one of 11 jurisdictions. If it were imposing disclosure of information from its own companies, then there would be great and very dangerous discrimination against companies incorporated federally under this act.

Mr. MOREAU: Is this exclusion permitted under the provincial act?

Mr. LESAGE: There is no such problem under provincial laws.

Mr. MOREAU: What about the conflict—or perhaps I should say the apparent conflict—with the Corporations and Labour Unions Returns Act.

Mr. LESAGE: I told you it was a very difficult subject for me to explain because it involves matters of policy, and I can hardly discuss other legislation which is now before parliament and which, I understand, passed third reading last night. I do not think it would be proper for me to comment on the merit of another act.

Mr. MOREAU: Mr. Chairman, I think this principle has been recognized by this parliament. The public interest is involved here too, and I would like to say again that I will perhaps have some amendment to move to this section. I am not completely satisfied.

Mr. LESAGE: I have not finished, Mr. Moreau.

If the drafters of the legislation had imposed an opening for application of the general principle of publication against only one jurisdiction, there would be discrimination against existing companies, and other people would naturally seek incorporation in other jurisdictions rather than under the federal authority. If it is desirable to have companies incorporated federally, I think until a general law applying the principle of disclosure is in force all across Canada, the federal Companies Act must give exactly the same protection to the public as the provincial acts. Otherwise the business people and the people of the financial world will seek incorporation elsewhere, and that would mean almost destruction of the system, until general legislation applicable across Canada is brought into force.

I do not think this amendment changes in any way the existing situation with regard to secrecy of the financial statements. It does not prevent a study or legislation containing the principle that there is major public interest in having disclosure. In the meantime, we have to offer to our companies the same protection as the provinces, and we cannot put our companies at a disadvantage thereby almost closing the facilities of incorporation at the federal level.

Mr. MOREAU: Would it not be fair to say the provinces have approached this from a somewhat different direction through their securities and exchange commissions? I do not think it is completely fair to say there is no recognition of this problem by most of the provinces.

Our most important problem here is on the question of wholly owned subsidiaries and the lack of disclosure of information.

Mr. LESAGE: I know.

Mr. MOREAU: I personally feel it is not in the public interest and not in the national interest. We have to begin to cope with this problem at some time.

Mr. LESAGE: I agree that something may have to be done but not at this moment. You were saying that provinces with their securities commissions have taken a similar approach but the federal companies are subject to all the provincial securities commissions the same way as the provincial companies are.

Mr. MOREAU: Only if they list their shares for trading.

Mr. LESAGE: It is exactly the same problem for provincial companies. The only thing that is important is to keep both types of companies, federal and provincial incorporated companies, at the same level and at the same advantage at the moment. I see no objection whatsoever to the general legislation. I do not see how this amendment would in any way affect the further study.

Mr. GREENE: What provisions are in the draft uniform act?

The CHAIRMAN: I do not want to interrupt here but we do have a caucus and Mr. Nowlan's party is already at the very moment caucusing. I think we should rise. The point I want to make now is I think we are going to meet next Tuesday. I think we should complete the explanatory notes if we have to have three sessions on Tuesday, and ask to have the sections carried because we have to get it back to the house. Time is of the essence. I am not going to suggest that we meet at 9 o'clock on Tuesday. If necessary we will carry on in the afternoon and in the evening but we must finish this bill.

Mr. GRAY: Do you want a motion, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. GRAY: I so move that we adjourn to next Tuesday at 9 o'clock.

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(HOUSE OF COMMONS
Second Session—Twenty-sixth Parliament)
1964-65

CANADA,

STANDING COMMITTEE

ON

BANKING AND COMMERCE,

(Chairman: LAWRENCE T. PENNELL, ESQ.)

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 19

TUESDAY, MARCH 9, 1965

Respecting

Bill S-22, An Act to amend the Companies Act.

(INCLUDING TWELFTH REPORT TO THE HOUSE)

WITNESSES:

Mr. Louis Lesage, Q.C., Director, Companies and Corporations Branch,
Department of the Secretary of State; J. Peter Williamson, Associate
Professor of Law, University of Toronto.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Lawrence T. Pennell, Esq.

Vice-Chairman: R. Gendron, Esq.
and Messrs.

Aiken	Grafftey	More
Armstrong	Gray	Moreau
Asselin (<i>Notre-Dame-de-Grâce</i>)	Grégoire	**Morison
Basford	Greene	Mullally
Bell	Habel	Nowlan
Cameron (<i>High Park</i>)	Hales	Nugent
Cameron (<i>Nanaimo-Cowichan-The Islands</i>)	Jones (Mrs.)	Otto
Caouette	Kelly	Pascoe
Chrétien	Kindt	Rynard
Côté (<i>Chicoutimi</i>)	Klein	Scott
Douglas	Lambert	Skoreyko
Frenette	Leblanc	Tardif
Flemming (<i>Victoria-Carleton</i>)	Lloyd	Thomas
Gelber	Macaluso	Vincent
	Mackasey	Wahn
	McCutcheon	Watson (<i>Châteauguay-Huntingdon-Laprairie</i>)
	*McLean (<i>Charlotte</i>)	Woolliams—50.

*Replaced Mr. Blouin on March 8, 1965.

**Replaced Mr. McNulty on March 8, 1965.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, March 4, 1965

Ordered,—That Bill S-48, An Act respecting The Economical Mutual Insurance Company, be referred to the Standing Committee on Banking and Commerce.

(Note: The Proceedings on this Private Bill were not printed.)

MONDAY, MARCH 8, 1965.

Ordered,—That the names of Messrs. Morison and McLean (*Charlotte*) be substituted for those of Messrs. Blouin and McNulty on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND
The Clerk of the House.

REPORT TO THE HOUSE

MARCH 11, 1965.

The Standing Committee on Banking and Commerce has the honour to present its

TWELFTH REPORT

Your Committee has considered Bill S-22, An Act to amend the Companies Act, and has agreed to report it with the following amendments:

On Clause 11

Amend by striking out lines 14 to 39 on page 9 and substituting therefor the following:

"12A. (1) In this section the expression "mutual fund shares" means any class of shares having conditions attached thereto that include conditions requiring the company issuing the shares to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid.

(2) Where the only undertaking of a company is the business of investing the funds of the company, its letters patent or supplementary letters patent may provide for the issuing of one or more classes of mutual fund shares, in which case the letters patent or supplementary letters patent shall set out the conditions governing

- (a) the surrender of fully paid mutual fund shares or any fractions or parts thereof that are fully paid; and
- (b) the determination of the price to be paid therefor and the manner and time of payment thereof.

(3) Any mutual fund shares or fractions or parts thereof surrendered to the company pursuant to the conditions attached to such shares shall be deemed to be no longer outstanding and shall not be reissued by the company.

(4) There may be included in the conditions attached to mutual fund shares

- (a) a condition providing for a participating interest in any fund administered by the company; and
- (b) a condition that, upon the surrender of any fully paid mutual fund shares, or any fractions or parts thereof that are fully paid, the price to be paid therefor may be paid out of capital.

(5) Where in any letters patent or supplementary letters patent the expression "redemption or purchase for cancellation", or an expression of like import, is used in relation to any shares of a company, the expression shall, in relation to mutual fund shares of the company, be deemed to be a reference to acceptance by the company of the surrender of those shares."

On Clause 21

Amend as follows:

- (a) by striking out line 4 on page 16 and by substituting therefor the following:

"section, where pursuant to subsection (1a) of section 12";

- (b) by striking out line 11 on page 16 thereof and by substituting therefor the following:

“of the company shall be thereby decreased; and subsections (1) and (2) of this section and sections 51 to 58 do not apply.”

On Clause 27

Amend as follows:

- (a) by striking out line 9 on page 17 and by substituting therefor the following:

“cancellation, otherwise than out of capital, if such purchase or redemption is made”;

- (b) by adding thereto, immediately after line 35 on page 17 thereof, the following subsection:

“(5) Nothing in this section shall be construed to apply to a redemption or purchase for cancellation of shares that are redeemed or purchased for cancellation pursuant to subsection (3) of section 49.”

On Clause 39

Amend as follows:

- (a) by striking out line 44 on page 27 and by substituting therefore the following:

“redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;”

- (b) by striking out lines 37 and 38 on page 29 and by substituting therefor the following:

“bonuses, fees and other emoluments;”

- (c) by deleting lines 26 to 33 inclusive on page 34.

On Clause 41

Delete Clause 41.

On original Clauses 42 to 52

Amend by renumbering as Clauses 41 to 51 inclusive.

On new Clause 52

Immediately after the renumbered clause 51, insert a new Clause 52, as follows:

“This Act shall come into force on the 1st day of July, 1965.”

Your Committee has ordered a reprint of the Bill, as amended.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issues Nos. 15 to 19 inclusive) is appended.

Respectfully submitted,

LAWRENCE T. PENNELL,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 9, 1965.
(24)

The Standing Committee on Banking and Commerce met at 9:40 a.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Armstrong, Basford, Cameron (*High Park*), Chrétien, Gelber, Gray, Greene, Kelly, Lambert, Leblanc, Lloyd, Macaluso, More, Moreau, Mullally, Nowlan, Pennell, Rynard (18).

In attendance: J. Peter Williamson, Associate Professor of Law, University of Toronto; Louis Lesage, Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

The Committee resumed consideration of Bill S-22, An Act to amend the Companies Act.

The Chairman introduced Professor Williamson who made a statement amplifying the comments contained in his letter to the Chairman (distributed to members of the Committee), and was questioned.

Mr. Lesage was recalled, commented on Professor Williamson's statement, and was questioned.

Mr. Lesage completed his explanation of the clauses of the Bill, and was questioned.

The Committee then proceeded to consideration of a private bill in respect of which verbatim evidence was not recorded.

At 11:15 a.m. the Committee adjourned until 3:30 p.m. this day.

AFTERNOON SITTING (25)

The Committee reconvened at 3:45 p.m. this day, the Chairman, Mr. Pennell, presiding.

Members present: Messrs. Basford, Cameron (*High Park*), Chrétien, Douglas, Gelber, Gendron, Gray, Greene, Habel, Kelly, Kindt, Lambert, Leblanc, McLean, More, Moreau, Mullally, Pennell, Rynard, Watson (*Châteauguay-Huntingdon-Laprairie*) (20).

In attendance: Louis Lesage Q.C., Director, Companies and Corporations Branch, Department of the Secretary of State.

Clauses 1 to 10 were severally carried.

On Clause 11

On motion of Mr. Lambert, seconded by Mr. Moreau,

Resolved—That Clause 11 be amended by deleting lines 14 to 39 on page 9 and by substituting therefor the following:

"12A. (1) In this section the expression "mutual fund shares" means any class of shares having conditions attached thereto that include

conditions requiring the company issuing the shares to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid.

(2) Where the only undertaking of a company is the business of investing the funds of the company, its letters patent or supplementary letters patent may provide for the issuing of one or more classes of mutual fund shares, in which case the letters patent or supplementary letters patent shall set out the conditions governing

- (a) the surrender of fully paid mutual fund shares or any fractions or parts thereof that are fully paid; and
- (b) the determination of the price to be paid therefor and the manner and time of payment thereof.

(3) Any mutual fund shares or fractions or parts thereof surrendered to the company pursuant to the conditions attached to such shares shall be deemed to be no longer outstanding and shall not be reissued by the company.

(4) There may be included in the conditions attached to mutual fund shares

- (a) a condition providing for a participating interest in any fund administered by the company; and
- (b) a condition that, upon the surrender of any fully paid mutual fund shares, or any fractions or parts thereof that are fully paid, the price to be paid therefor may be paid out of capital.

(5) Where in any letters patent or supplementary letters patent the expression "redemption or purchase for cancellation", or an expression of like import, is used in relation to any shares of a company, the expression shall, in relation to mutual fund shares of the company, be deemed to be a reference to acceptance by the company of the surrender of those shares."

The Clause, as amended, was carried.

Clauses 12 to 20 were severally carried.

On Clause 21

On motion of Mr. Moreau, seconded by Mr. Leblanc,
Resolved,—That clause 21 be amended

- (a) by striking out line 4 on page 16 and by substituting therefor the following:
"section, where pursuant to subsection (1a) of section 12";
- (b) by striking out line 11 on page 16 and by substituting therefor the following:
"of the company shall be thereby decreased; and subsections (1) and (2) of this section and sections 51 to 58 do not apply."

The clause, as amended, was carried.

Clauses 22 and 26 were severally carried.

On Clause 27

On motion of Mr. Lambert, seconded by Mr. Moreau,
Resolved,—That clause 27 be amended

- (a) by striking out line 9 on page 17 and by substituting therefor the following:
"cancellation, otherwise than out of capital, if such purchase or redemption is made";

(b) by adding, thereto, immediately after line 35 on page 17, the following subsection:

“(5) Nothing in this section shall be construed to apply to a redemption or purchase for cancellation of shares that are redeemed or purchased for cancellation pursuant to subsection (3) of section 49.”

The clause, as amended, was carried.

Clauses 28 to 38 were severally carried.

On Clause 39

On motion of Mr. More, seconded by Mr. Rynard,

Resolved,—That clause 39 be amended by stet line 44 on page 27 and by substituting therefor the following:

“redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;”

On motion of Mr. Lambert, seconded by Mr. Leblanc,

Resolved,—That clause 39 be amended by striking out lines 37 and 38 on page 29 and substituting therefor the following:

“bonuses, fees and other emoluments;”

Mr. Moreau, seconded by Mr. Leblanc, moved that clause 39 be amended by the deletion of lines 26 to 33 inclusive on page 34.

After discussion, and the question having been put on the proposed motion of Mr. Moreau, it was resolved in the affirmative on the following division: Yeas, 9; Nays, 3.

Clause 39 was carried, as amended.

Clause 40 was carried.

On Clause 41

Mr. Lesage was questioned, and following discussion, Mr. Moreau moved, seconded by Mr. Douglas, that clause 41 be deleted. The question having been put, the motion of Mr. Moreau was resolved in the affirmative, on the following division: Yeas, 10; Nays, 2.

Clauses 42 to 52 were severally carried,

On motion of Mr. Moreau, seconded by Mr. More,

Resolved,—That, as a consequence of the deletion of clause 41, the present clauses 42 to 52 inclusive be amended by renumbering as clauses 41 to 51.

On motion of Mr. Moreau, seconded by Mr. Leblanc,

Resolved,—That a new clause 52 be inserted immediately after the renumbered clause 51, as follows:

“This Act shall come into force on the 1st day of July, 1965.”

The Title was carried.

The Bill, as amended, was carried.

Ordered,—That Bill S-22 be reported, as amended.

*Ordered,—That Bill S-22, as amended by the Committee be reprinted.**

At 5:00 p.m., on motion of Mr. Rynard, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

**Note: It was later found to be not feasible to reprint the Bill.*

EVIDENCE

TUESDAY, March 9, 1965.

The CHAIRMAN: Gentlemen, we have a quorum. I would like to present this morning Professor Peter Williamson from the faculty of law at the University of Toronto. The professor has some news relating to mutual funds which he would like to place before the committee. On that note I will invite the professor to address the committee.

Professor J. P. WILLIAMSON (*Faculty of Law, University of Toronto*): Thank you very much, Mr. Chairman. I appreciate the chance to add some oral comments to the written submission I made. I apologize for not giving you more copies of the written submission; I just do not have the duplicating facilities.

With respect to the mutual fund shares, my chief concern was that what the proposed amendments do for mutual funds is simply to validate some arrangements that have been made that, I think, are not particularly appropriate arrangements but were the only arrangements anyone could make to handle mutual funds under the existing act.

Some of the comments I made in my written submission, I think, are no longer applicable. The latest version of this is in the proposed amendment, in subsection 4 of section 12A which would make the price paid by the mutual fund for its shares when they are surrendered payable out of capital. This is one thing that concerns me. I think the funds that have been set up so far have been redeeming their mutual fund shares out of paid in surplus. Most of them have not run into any trouble. Some of them provided, in their letters patent, that they may purchase their shares only out of paid in surplus; some did not. I presume all of them have been redeeming only out of paid in surplus, not out of capital. I do not think this has caused any trouble so far, but I think it may some time in the future. I would judge, from looking at a few financial statements, that paid in surplus amounts to something like two thirds to three quarters of the total asset value of at least the large funds, but I presume the day may come when it would constitute a much smaller fraction of the total assets of the funds, which means there could be a fairly serious limit on the extent to which a fund could redeem its shares. This, I think, is taken care of by subsection 4 (b) which will permit repayment out of capital.

However, I think there are still some problems in this payment out of capital. The position taken by the companies branch, as I understand it, is that a mutual fund share is not a share within the ordinary meaning of the word. I think this was probably the only way in which you could interpret mutual fund shares under the present act because, under the present act, you simply may not redeem common shares. It was necessary to think up some new type of interest that could be redeemed. I do not think there is really any need to preserve this concept of the mutual fund share as being something that is not a share within the ordinary meaning of the word "share". In this, I think, I disagree with Mr. Lesage.

One thing that concerns me is that if, under the Income Tax Act, a mutual fund share is not a share, then it may be a little difficult to know precisely how dividends, for example, would be treated. Are dividends on mutual fund shares necessarily subject to a dividend tax credit? I would presume that these dividends would at present be treated as eligible for a dividend tax credit, but there may be some doubt. I do not really see why mutual fund shares cannot be

considered shares, why it is not possible simply to say that certain kinds of shares purchased by the mutual fund may be surrendered. This I think would simplify the tax problem. As things stand, I am not sure that it is clear from the proposed amendment that mutual fund shares are not shares in the ordinary sense of the word. I know this is the interpretation which the companies branch gives to the mutual fund shares but I am not certain that it is the interpretation, that, for example, a court would give.

If they are shares, while it is true that they may be paid for out of capital, then I think you are still faced with the question of whether paying for these shares out of capital would constitute a reduction of capital and bring on all the formalities of sections 48 to 59 of the act which deal with a reduction of capital—and certainly no mutual fund can go through all these formalities each time it purchases shares from a shareholder, and there is really no need for it. The creditors are well protected as long as the mutual fund does not make itself insolvent as it goes through a purchase of shares, and I think perhaps even without that rule creditors are pretty safe. There are very few creditors of a mutual fund. I suppose they are a few suppliers of office equipment perhaps, where the directors' fees are payable and the management fee is payable. I think few funds actually borrow money, but apart from that I cannot imagine claims of creditors actually arising. In any case there should be very little problem because when shares are purchased by a mutual fund they are normally purchased at at least no more than the net asset value which you calculate in this way: You take the asset value of the funds, subtract the liabilities, and what is left is available to pay out to shareholders. So there is very little chance that a creditor is going to be injured, unless, of course, the assets of the company do not consist of the ordinary kind of mutual fund assets, that is stocks and bonds. I suppose a mutual fund might become involved in non-marketable assets, and there might be some difficulties, although a balance sheet test may indicate there was plenty of protection for the creditors which there might not actually be.

As the amendment stands, I think there is a question whether sections 48 to 58 would apply. This is why I suggested that there should be an amendment to section 49 which appears on page 16, clause 21, subsection 3, which provides an exemption from these elaborate formalities where preferred shares are redeemed out of capital. I think there is a misprint in this proposed subsection 3. I understand that has been corrected. The reference should be to subsection A. This makes it quite clear that when a company is redeeming its preferred shares there is no need to go through these elaborate arrangements for the protection of creditors even though preferred shares are being redeemed out of capital. I suggest that the same subsection should refer to the redemption or surrender of mutual fund shares under section 12A. There is no doubt about whether or not the companies must go through all of these formalities when their mutual fund shares are surrendered.

There is one other element that takes me back to the question of whether mutual fund shares are shares. I think there is no reason why a mutual fund should be forced to have more than one class of shares. The funds that are set up now all have, as far as I know, two classes: They have a class that may be called special shares that will now be called mutual fund shares, and they have another class sometimes called common shares and sometimes called deferred shares, that are not redeemable. So far as I can see, this second class is simply a nuisance. All the funds have them. The total par value of this second class is usually \$500, perhaps \$1,000 or \$2,000. In many cases the shares have never been issued; they have been authorized because it was inconceivable that you would have a company with only these mutual fund shares. They certainly offer little protection to the creditors, if that is their purpose, and I

see no real reason for requiring that a company have any shares other than the mutual fund shares. I do not think this is a very serious problem; it is simply a nuisance at the present time.

Mr. LESAGE (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Where is it provided in section 12A that a company must have two classes of shares?

Mr. WILLIAMSON: I do not think section 12A or any other section requires that you have other shares. What concerns me is the interpretation that mutual fund shares are not really shares, which would lead me to the conclusion that even with section 12A we would be in the same position as we are in now without it; that is, in order to have a company that looks like a company you have to have both mutual fund shares and another class of shares. I would agree there is nothing in section 12A that requires it; but I do not think it is consistent with a single class of shares to say that the mutual fund shares are not shares because this leaves you with a company that does not have any shares at all in the ordinary meaning of the word. I think this would bother most people setting up these funds, and it might bother as well the creditors and the shareholders.

If I may go on, Mr. Chairman, I would like to mention some sections that do not deal with the mutual funds. An element that concerns me a good deal is in clause 10 on page 7 of the bill, section 12(1a), one that I had already referred to. It permits the redemption of preferred shares out of capital. This subclause (1a) was put in after the bill was introduced in the Senate because, I believe, a number of witnesses suggested that the Ontario experience with preferred shares redeemable out of capital had been satisfactory and there was no reason why the dominion act should not permit the redemption of preferred shares out of capital. I think the explanation given in the Senate committee for including this subclause (1a) was that it seemed appropriate to provide for redemption of preferred shares out of capital. However, section 61, which appears on page 17 of the bill, has been retained. It has been redrafted but its essential meaning, I think, has been retained. I think section 61 still says that preferred shares can be redeemed only out of earned surplus. I suggest that there is a contradiction here, that the amendment would keep the concept that preferred shares may be redeemed only out of earned surplus and would introduce the concept that they may be redeemed out of capital.

I am not sure where this leaves the company, whether it has a choice. I do not think it really has a choice. Section 12(1a) seems to say it may redeem out of capital, and section 61 seems to say it may not redeem out of capital. I would suggest that section 12(1a) is a good section to have. This does follow the Ontario pattern that preferred shares may be redeemed out of capital. In this case I would think section 61 should simply be deleted entirely. However, if preferred shares are to be made redeemable only out of earned surplus, then I would think section 61 should be kept, but section 12(1a) would then be dropped. If section 61 is kept, I think some rewording is indicated. The accountants in particular have objected to the phrasing in subsection 4 which says: "The surplus resulting from a redemption or purchase for cancellation of shares of a company made in accordance with this section shall be designated as a capital surplus. . . ." I suppose everyone knows—at least I suppose all company lawyers know that surplus resulting from a redemption of shares is something very different from what is meant here. I think, as the accountants said, the only surplus that results from a redemption of shares would arise if you redeemed the shares for less than you had received for them, perhaps for less than the par value, which would be very unusual. What this subsection means, I think, is that when the shares are redeemed, what would have been a reduction of capital is cancelled out simply because then a reduction in the par

value must be made up by a transfer from earned surplus to capital surplus. The language I think is simply inappropriate, although perhaps it is true that not many people misunderstand it.

Finally, I think there could be a good deal more improvement in a section that has certainly been improved. This appears on pages 8 and 9, clause 19, section 12, subsections 14 and 15. I think the meaning of subsections 14 and 15 has never been entirely clear. These are the subsections that prevent the issue of non-voting shares. They were put in in the 1930's. I think it was pretty clear that the original subsection 14 was aimed directly at the device of management shares where a company issued a few shares carrying voting rights to an inside group and then issued a lot of shares with no voting right to an outside group, giving the inside group a monopoly of voting power with perhaps a very small investment.

Unfortunately, the original subsection 14 was worked a little too explicitly in terms of blocking this device. It said you might not give to one class of shares exclusive voting power. I think it did leave open the possibility of giving voting power to two classes of shares and then having a third class with no voting power. I do not think the companies branch has ever been willing to permit a class of shares with no voting power; I do not think it was entirely clear from the old subsection 14 that this was forbidden. The new subsection 14 seems to take care of the point; it says that no class of shares may be issued with voting rights limited in such a way as to attach to any other class or classes of shares the exclusive right to control the management of the company, so this would preclude an issue of non-voting shares, I suppose.

I think subsection 15, however, still needs some improvement. Subsection 15 provided an exception to subsection 14. As I would paraphrase the two sections as they now stand in the act, subsection 14 says you may not create a class of shares that has exclusive power, and subsection 15 says there is one exception to this, you may give exclusive voting power to a class of preferred shares on the happening of a stated event. I think one of the defects in the subsection is that it does not expand on what a stated event is. Pretty clearly the intention was that when dividends had been passed for a certain number of periods it would be appropriate for the preferred shares to take over the company. I think subsection 15 was intended to permit exclusive control of the company to the preferred shares in this sort of situation. I do not suppose that exclusion is really very important. Very few companies give exclusive control to an issue of preferred shares under any circumstances. Many companies do give voting rights to their preferred shares, not exclusive control but at least voting rights when the dividends have been passed. I think subsection 15 has been interpreted to mean that this is all right; that is, that you do not have to give full voting rights to preferred shares, and it is sufficient to give them the right to vote when certain things have happened. I am not sure that the passing of dividends carries this inevitable interpretation, but I think it is the interpretation given by the companies branch. I believe it would be appropriate to redraft subsection 15 to make it clear—if this is the meaning—that the voting rights of preferred shares may be limited to the extent that they may be able to be voted only when certain things happen. I would hope the term "stated event" might be spelled out in a little detail. I believe the intention was that the stated intent would be the passing of some dividends. I do not think it is at all clear from the wording of subsection 15 alone that that is what is meant by stated event.

I think that is all I have to say, Mr. Chairman.

Mr. GELBER: I was interested in the discussion about shares in mutual funds. I wonder whether some of these problems would dissolve when you view mutual fund as a partnership. Do you not think that a mutual fund really is a form of partnership?

Mr. WILLIAMSON: I think it is important to know what your mutual fund is. A few mutual funds are organized legally as trusts. I think this is perhaps uncommon, although on the coast there are some funds organized as trusts; they probably avoid all the company law problems that other firms have run into, although at the same time I think they have avoided some tax benefits that the other companies enjoy. I believe most of us think in non-legal terms of a mutual fund as a sort of trust or partnership, but the difficulty is you have to come back to the Companies Act and this is where we have run into trouble in the past. The Companies Act really does not take care of mutual funds. I would hope the act itself could be amended to provide what is needed for a mutual fund without working out these rather unorthodox arrangements which I believe never have been challenged in the courts, but which might be.

Mr. GELBER: When you say trust or partnership, it seems to me trusts or partnerships are radically different concepts.

Mr. WILLIAMSON: I think the legal concept of a trust, a partnership or a corporation is radically different. This is why it is important to say what you have for any particular fund.

Mr. GELBER: If the law recognizes a mutual fund as simply a partnership, would that not simplify the problem?

Mr. GRAY: No. You would not have the benefit of limited liabilities.

The CHAIRMAN: Would you please be courteous enough to address the witness through the Chair?

Mr. GELBER: If we viewed mutual funds as a partnership, it would simplify many of the problems.

Mr. WILLIAMSON: I think it would require the drafting of a whole set of laws for these partnership mutual funds and others to take care of the limited liability. The taxing consequence would have to be thought of fairly carefully. They would be quite different today from the tax consequences of a corporate mutual fund and quite different, perhaps, from the tax consequences of a trust mutual fund. As the Income Tax Act now reads, there are some advantages in being able to use the corporate form for a mutual fund. There are some choices which would not be available if the fund were a trust or a partnership. I think this would require a lot of legislative drafting, but it could be done.

Mr. GELBER: I understand that many funds prohibit the hypothecation of assets for borrowing. In that event the fund simply remains a mutual investment instrument.

Mr. WILLIAMSON: Yes, I think this is true.

Mr. GELBER: And the problems that are mentioned about limited liabilities therefore disappear.

Mr. WILLIAMSON: Well, I am not sure. I suppose in most cases this would be a very small problem. Today some mutual funds have fairly substantial liabilities owed to brokers, for example. I think almost all these funds now are in a position that no shareholders, even if they had limited liabilities, would be very much worried about this. The day might come when they would be. I think it would be possible to construct the fund as a limited partnership to take care of the limited liability.

Mr. GELBER: A person who wanted to be free of a liability could invest in an investment trust?

Mr. WILLIAMSON: Are you thinking of a legal trust?

Mr. GELBER: A closed end trust. I would like to come back to the question of the tax complication and whether the 20 per cent benefit would be available, and whether this is clear. Does a mutual fund not have to declare whether or

not its income is received from Canadian taxpaying corporations, and is not the holder of shares in a mutual fund then able to get the benefit of his 20 per cent on that portion of the income which is derived from Canadian tax-paying corporations.

Mr. WILLIAMSON: Yes, but I think, as the Income Tax Act is worded now this privilege would depend upon his receipts from the mutual fund being dividends.

Mr. GELBER: He would not be liable for capital unless he was in the stockbrokerage business; any distribution of capital for capital gain under the Canadian income tax law would not be taxable unless he is in the stockbrokerage business.

Mr. WILLIAMSON: Yes.

Mr. GELBER: So there is no problem in respect of the 20 per cent.

Mr. WILLIAMSON: There is a problem only to this extent; if these dividends which the mutual funds distribute must be dividends within the meaning of the Income Tax Act, the tax credit would be passed on, and then it is important to know whether they are dividends under the act. At the present time I do not think the Department of National Revenue would be likely to challenge this, but it opens up one more ambiguity, perhaps, in the Income Tax Act.

Mr. GELBER: If the fund is regarded as a partnership and if there is full disclosure to the shareholder of the source of the dividend, then the tax problem disappears.

Mr. WILLIAMSON: In that case I suppose it would lose the opportunity to have the fund taxed as an ordinary corporation. This is what I presume the trusts in Vancouver have been willing to give up.

Mr. GELBER: If it distributes 90 per cent of its income, it is tax free. Is that correct?

Mr. WILLIAMSON: I have forgotten whether it is completely tax free; I think not. Is it not still subject to the 21 per cent rate of interest on dividends which do not qualify as dividends from taxable corporations? However, it has the choice of shifting out of the corporation tax classification into the ordinary tax classification. I know some companies have moved back and forth over the years. At the moment the only companies I have checked on are being taxed as investment companies rather than as ordinary companies; but they do have this flexibility that would not be available to the trust or partnership, and I assume this is of some value to them.

Mr. RYNARD: Is there anything in the act which prohibits mutual funds buying on margin in the market.

Mr. WILLIAMSON: No. In general, I think mutual funds can do pretty much as they please so far as the act is concerned. The Mutual Fund Association has drawn up a code of ethics and regulations. I believe most of the large funds belong to this association and have subscribed to the code. The code says there will be no buying on margin and no short selling. The letters patent of most of these large funds specify there will be no margin buying and no short selling. Some of them specify that there shall be no borrowing, but I think the code of ethics permits some borrowing.

Mr. RYNARD: Do they all subscribe to the code of ethics?

Mr. WILLIAMSON: I think the large firms do, but of course there is no legal requirement to abide by the code of ethics.

Mr. RYNARD: A company could operate in Canada without subscribing to the code of ethics and without being under any control by the act?

Mr. WILLIAMSON: I suppose only if the companies branch would be willing to accept letters patent that did not explicitly forbid short selling and buying on margin. I suppose the companies branch would object at this point.

The CHAIRMAN: Are there any further questions? If not, on behalf of the committee, may I express our appreciation for your attendance here at your own expense and for the very informative statements you have offered to the committee. You are quite at liberty to stay here for our further deliberations. Mr. Lesage probably will have some comments to make on the views you have expressed to the committee.

Mr. Lesage, do you wish to carry on with your explanatory notes and then proceed to the professor's comments?

Mr. LOUIS LESAGE (*Director of Companies and Corporations Branch, Department of the Secretary of State*): Perhaps it would be better, since I have my notes, to comment on what Professor Williamson said.

Generally speaking, I think Professor Williamson and myself will not have any difficulty in coming to full agreement. His first worry now has disappeared by the new amendments we are going to propose and which have been distributed this morning. Before Professor Williamson came this morning, some conversations had been held and we also had some correspondence. This has brought forth an amendment by the addition of subsection (4) (b).

The CHAIRMAN: You are referring to the amendments on the single full page?

Mr. LESAGE: The last one. It takes care of the major objection of Professor Williamson. We agree that the previous text was not sufficiently clear and could present some difficulties.

In so far as the problem of income tax is concerned, before drafting those amendments we had extensive conferences with the officials of the mutual fund companies association. Since this did not appear to be a worry to them with the text as now amended, we think we can say—because the mutual fund share is defined otherwise than it was in the bill—that mutual fund share “means any class of share” and, therefore, since the word “share” is there, this appears sufficient to meet the requirements of the Income Tax Act. As Professor Williamson indicated, there may be a remote possibility that the income tax department would express other views in the future, but of course this will be a matter of policy for the government, and I do not think I am in any way qualified to discuss taxation problems. However, since everyone appears to be reasonably satisfied that a mutual fund share means a class of share—although at the same time it means something else—there will not be too many problems therefrom.

Another very interesting point brought up by Professor Williamson is in respect of section 49 on page 16, where he would like to see some clarification of the very last line, where it says, “shall be thereby decreased”, because the implication is that sections 49 to 58 shall not apply. For clarification of the text, I think, with Professor Williamson, the addition of the words “and sections 49 to 58 shall not apply” can be agreed upon very easily.

The CHAIRMAN: Excuse me, Mr. Lesage, are you adding that to the clause?

Mr. LESAGE: Yes. The words “and sections 49 to 58 shall not apply.”

The CHAIRMAN: That is at the end of subclause (3)?

Mr. LESAGE: Yes. It is page 16.

Mr. WILLIAMSON: There may be one problem there, Mr. Chairman, because we are in section 49 now.

Mr. LESAGE: Section 49, subsections (1) and (2)?

Mr. WILLIAMSON: Yes.

Mr. LESAGE: Then, for proper drafting, it should be “section 49, subsections (1) and (2), and sections 50 to 58 shall not apply”.

The other problem which was raised by Professor Williamson, a problem which is of great interest, is one arising from section 61. If we come back to section 12(1a)—

The CHAIRMAN: Page 7.

Mr. LESAGE: —we see the words “the letters patent or supplementary letters patent may provide for issuing of preferred shares...subject to redemption or purchase for cancellation out of capital...”

This means that it must be spelled out in the letters patent whether preferred shares may be redeemed out of capital or out of profits. This system is different from the Ontario system whereby preferred shares may be redeemed at large or out of capital or out of profits.

The scheme we have provided is twofold. The companies will have to elect to redeem out of capital or out of profits. Section 62 has been drafted accordingly. It provides that a company must indicate whether the redemption is to be out of capital or out of profits for the obvious reason that redemption out of capital, by the operation of the new subsection (3) of section 49, implies an automatic decrease of capital while section 61, on the other hand, says that a redemption out of profits shall not be deemed to be a reduction of the paid-up capital.

There is such a difference between redemption out of capital and out of profits that we had to create both systems. It will be possible to have the same class of preferred shares redeemable out of capital and out of profits, or only out of profits or only out of capital; but the necessity to mention that in the letters patent or supplementary letters patent while describing the capital stock will avoid all possibility of misunderstanding in that particular field of redemption.

Professor Williamson indicated that in subsections (14) and (15), which deal with the voting rights of preferred shares, the words “stated events” are not sufficiently defined or delineated. I agree that they are not defined or delineated, but that was the intention.

In most cases the practice of the department has been to say that the holders of preferred shares shall have no voting rights unless the company shall fail for two years to pay dividends on those shares. But this is not the only possibility. Voting rights may also be attached to other features such as redemption or purchase for cancellation of part of the capital stock. The broad wording of subsection (15) gives an opportunity to companies to ask for different “stated events”, and the stated events must be those stated in the letters patent. In some legislation, I know, the “two years default” is defined, but we think it is too narrow and we think we would be doing harm to some companies in cases where that scheme would not be appropriate.

Mr. GRAY: May I interrupt, Mr. Chairman?

There would be nothing in the section to prevent a charter from saying that in the event that Christmas occurs after the issue of the charter the voting rights will be vested in that class of shares. Are we not just making it easy for unscrupulous operators?

Mr. LESAGE: The purpose is certainly not to permit at all times a group to be vested with the only authority over the invested capital in other classes of shares.

Mr. GRAY: But, Mr. Lesage, the “stated event” would be interpreted by the courts in the broadest possible way, and you would have no powers to prevent the issue of the charter because of any frivolous event. I suspect if you attempted to prevent people having a frivolous event and they went to court the charter would have to be granted.

Mr. LESAGE: We have kept the act as much as possible as it is. We have operated with those sections over the years and we are predicated our accept-

ance or refusal of conditions upon departmental policies; we think that is the only way in which to do it. If we acted otherwise we would be limiting too much the various possibilities of "stated events." They have to be defined in the letters patent or in the supplementary letters patent.

Mr. GRAY: Where does the act give you discretion to reject applications in respect of some stated events and not others?

Mr. LESAGE: The Secretary of State may issue or may not issue letters patent. There is nothing compulsory upon the Secretary of State. The Secretary of State may refuse to issue letters patent for any reason and without giving any reason; but as a matter of practice the department would never refuse to grant letters patent or supplementary letters patent without giving the reasons to the applicants.

Mr. GRAY: Some things in the act are spelled out precisely, as for example the contents of the financial statements that have to be filed, and so on. If the draftsman of the act was able to be precise with respect to that particular portion of the act, why could not the clause dealing with acceptable events be spelled out?

Mr. LESAGE: It is very dangerous to close the door. We are apparently retaining complete authority, but in fact we are aiming to open the door more widely. If any particular event was not listed, under the scheme you are suggesting it would not be possible for the department to grant letters patent. Under this other type of stated events, which we can not foresee at the moment but which could come as part of a contract between the applicants, we may very well confirm a stated event in a very particular case—by our letters patent or supplementary letters patent. If we were to limit that to a certain type of cases, then we would be barred from granting letters patent confirming a contract between parties, and we want to keep the possibilities broad because that is a very practical arrangement in many instances.

Mr. Chairman, this covers my notes on Professor Williamson's comments. The only amendment you thought desirable at this moment is being covered, Professor Williamson? If there is something else will you please mention it?

Mr. WILLIAMSON: I would like to refer to section 12(1a) and section 61 which deal with the redemption of preferred shares out of capital.

I would suggest that at least section 12(1a) should refer to section 61 and that it should say where section 12(1a) applies 61 does not.

Section 12(1a) appears on page 7 under clause 10. It states that the letters patent or supplementary letters patent may provide for the issuing of preferred shares with par value subject to redemption or purchase for cancellation out of capital.

Mr. LESAGE: As a matter of drafting, I do not think we can make any reference to it in section 12 because this is the part of the act which describes the possibilities. If such a reference were to be made we would have to say "or in section 49 or in section 61". I would see no objection to "or in section 49 or in section 61".

Mr. WILLIAMSON: I think it is necessary to say that section 12(1a) does not apply where section 61 does apply. What bothers me is that as the sections stand it is not clear that section 61 would not apply when section 12(1a) would apply.

Mr. LESAGE: I would agree with you that some clarification could be made here, and it could perhaps be made by the addition of a subsection (5).

The CHAIRMAN: Are you referring to clause 27 and section 61 which appear on page 17?

Mr. LESAGE: Yes.

What text would you suggest, Professor?

The CHAIRMAN: If the explanatory notes are finished, may I suggest that as Mr. Lesage and Professor Williamson are now on common ground they should meet and complete the drafting?

Agreed.

Mr. WILLIAMSON: I missed one point, Mr. Chairman, on the mimeographed page which deals with section 12(a) clause 11. In the second line the words "means any class of shares", should I think read "means shares of any class". It is not a major change.

The CHAIRMAN: Again, that is a matter of drafting that you can discuss with Mr. Lesage.

Mr. LESAGE: Yes, Professor, we can discuss these points together, and perhaps we can deal with section 49 at the same time.

The CHAIRMAN: If it is agreeable to the committee we will turn to the explanatory notes and, in particular, to section 121F on page 34.

Mr. MOREAU: There are one or two questions that I would like to ask Mr. Lesage on that section.

Would the deletion of subsection (2) of section 121F involve any other consequential amendments?

Mr. LESAGE: I would say it would probably involve a similar amendment to section 125A (2).

Mr. MOREAU: Yes, that is the other section I had in mind.

Mr. LESAGE: I do not think it would have direct consequential effect on the text, but it would have the effect of indicating to the companies that the government may at any time and without notice change its policies and open all the files. This may have very serious bearing on the incorporation of companies at the federal level.

Mr. MOREAU: I appreciate that point. I just wondered whether the deletion of that section would naturally result in any other amendments.

Mr. LESAGE: No, I do not think so, unless you wanted to follow your idea and come to something similar in section 125A.

Mr. LAMBERT: Any suggestion of the deletion of section 121F(2) and any similar deletion would go to the heart of this whole matter.

Mr. MOREAU: I would agree, Mr. Lambert, through you, Mr. Chairman, that it is quite an important principle. There is a matter of principle involved; there is no question about that.

Mr. LAMBERT: In my book, if it is deleted the whole thing becomes meaningless. In other words, there would be no provision in any circumstances for withholding information. There is provision here for certain exceptional cases in which you have to go before a chief justice.

Mr. MOREAU: Section 117.

Mr. LAMBERT: The whole thing flows from it.

Mr. MOREAU: I did not want to get into a debate on this matter because I had thought we might finish the bill and the explanatory notes, but if Mr. Lambert is talking about section 121F I would add that it applies in the other way to the section we were talking about earlier, section 117, where the company could apply to the chief justice to withhold certain information from the shareholders at the annual meeting.

In the instant case, the Secretary of State must apply to the chief justice to release anything. I think there is a very important difference in those two sections. I wonder what would be the consequences so far as this act is concerned. I know Mr. Lesage is concerned about incorporations of federal companies as opposed to provincial companies. But the Kimber commission in

Ontario has been hearing similar submissions concerning the release of financial statements. I think the provinces are moving in this direction anyway. My own view is that we should take a very careful look at this.

The CHAIRMAN: Are there any further questions on page 34?

Mr. MACALUSO: I was just going to corroborate what Mr. Moreau has said. I think 121F(2) is a clause on which I have certain reservations. I would agree with him that perhaps it should be held over until we have finished with the bill because I for one have further questions on it.

The CHAIRMAN: I think this is the time to raise them. We are going through the bill right now. I would hope that when we start going through the clauses everybody will be clear as to their purpose.

Mr. MACALUSO: Mr. Lesage, on subclause 2 of clause 121F, I know there are certain reasons why some documents are not made a matter of public information as far as public companies are concerned but what is the purpose for that subclause? Perhaps you can restate it because I was unable to be here earlier.

Mr. LESAGE: The real purpose is to put the companies incorporated under the federal Companies Act on the same level as the provincial companies at the present time. No provincial jurisdiction requires the filing of financial statements with the department. It is only accidental that we in the department have a copy of those financial statements. This is for the protection of those companies. Until a general policy is established we think that we would be discriminating against those federal companies already incorporated and we would be discouraging the incorporation of the federal public companies because those companies would not have the same protection that they would have if they were incorporated provincially.

Mr. MACALUSO: Do you not think it would be best to wait until a general policy is established rather than to do it piecemeal? As you, Mr. Lesage, and I know it is very difficult to have this removed from the statute book or altered. I would think that until your general policy is established it would be best to leave it as it is. You mention the protection of the companies but I am thinking of the protection of the shareholders of these public companies. That does not mean to say I agree with the laws that are set down in the provincial companies act at the present time.

Mr. LESAGE: But we have to consider the fact that the federal jurisdiction is only one out of 11. Otherwise it would amount to discrimination and make preferential statements on the possibility of information being disclosed under the companies act. This is only a temporary measure until a policy is established. I do not see how the fact of putting the federal companies under the same protection as they have under their provincial jurisdiction would in any way prevent all jurisdictions from considering another general policy.

Mr. MACALUSO: That is my point. I do believe we should not incorporate a temporary measure with which there is some conflict until a policy is established. I do not see what loss there is to the federal government if the federal public charter is not granted to a public company.

Mr. LESAGE: The mere withdrawal of subclause 2 would become an indication of what would be the policy of the government and that is what we want to avoid. We want to give the federal companies a status equal to that of the provincial companies.

Mr. MACALUSO: It does not mean to say that the laws of the provinces are right.

Mr. LESAGE: I would agree with you.

Mr. MACALUSO: We should not compound something that is probably wrong in the provinces.

Mr. LESAGE: But we cannot work alone in that field because we are representing such a small percentage of the incorporated companies. If we work alone we destroy ourselves.

Mr. MACALUSO: I do not think it is a matter of co-operative federalism.

Mr. GELBER: Subsection 121E which appears on page 34 of the bill says that information should be made available to the shareholders. Is that not correct?

Mr. LESAGE: Yes.

Mr. GELBER: Therefore 121F(2) in no way restricts the information available to the shareholders.

Mr. LESAGE: No.

Mr. GELBER: This answers Mr. Macaluso's point.

Mr. MACALUSO: It did not answer my point.

Mr. MOREAU: Mr. Lesage, there was no such provision in the previous act, was there?

Mr. LESAGE: No, but there was a departmental policy which left this to the discretion of the minister. We find that this is perhaps not a sufficient guarantee to the existing companies that they will not be discriminated against by the department, and it is not a sufficient guarantee for those who want to incorporate that their financial statements will not be disclosed unless there is a general policy established.

Mr. MOREAU: But we have been operating without such a section for 30 years.

Mr. LESAGE: Yes, but if you were in the department you would see the difficulty of holding information if you have only to rely upon ministerial discretion.

Mr. MOREAU: What would you say, Mr. Lesage, if that section were to read that documents filed with the Department of the Secretary of State, pursuant to this section, shall be open for public inspection except in the case where a company has applied before a chief justice. What would you think if it were phrased in that way rather than to make the Secretary of State apply for permission to disclose information? How would you view the onus being put on the company?

Mr. LESAGE: At this time we have approximately 4,000 companies, this means 4,000 applications, before the court of justice.

Mr. MOREAU: I would disagree with that answer because I think the well-informed and progressive company of today relies on full disclosure and full information.

Mr. LESAGE: Of course, I agree with you there.

Mr. MOREAU: I think that a healthy capitalism means a well-informed public and shareholder. It would seem to me that section 121F, written in that way, would be in agreement with section 117 where the onus is put on the company to ask for dispensation to disclose information to their shareholders.

Mr. LESAGE: I would be ready to consider what you say, Mr. Moreau, but I prefer to indicate that the Secretary of State may disclose information and that this should be left to the ministerial discretion unless it is taken to a court of justice. It should be left to the department to a certain extent, and if the department has to disclose the information, it could inform the company. If you do not want us to disclose the information, you can go to a judge. This could be done that way. The procedure would be easier and it would not appear as a statement of policy. That is what you want to avoid, that this subsection be

a statement of policy. It is not intended to be a statement of policy. Maybe your suggestion is the best one, to partly adopt the principle of section 117 so that subsection 121F would not look like a statement of policy.

Mr. MOREAU: You are perhaps quite aware that the Ontario government at least has been asking the Kimber commission to look into these problems. I know submissions have been made on this particular point. Considerable concern has been expressed by a lot of companies about the lack of public information, and I think certainly the Ontario jurisdiction appears to be heading towards greater disclosure. I would hate to see our federal Companies Act moving in the opposite direction.

Mr. LESAGE: We gave the appearance of moving but we are not. If we can satisfy your worry to a great extent by redrafting this section—and you are not the only one to have this worry—then I would agree entirely to a redrafting along the principle of section 117. If you do not mind, we could work this out after the meeting together with Professor Williamson, and this would comprise a similar amendment to section 125A(2). I think there is a lot of merit in the view you have expressed and I think we can work out the wording. Of course we will have to take advice on this because I am only a representative and I cannot change what the government has decided. I will have to discuss this with you and take it to the other officials of the department.

The CHAIRMAN: Are there any further questions on page 34? Any questions on pages 35, 36 or 37?

Mr. LESAGE: Could I say a word on page 37, section 125 which concerns the annual summary that the companies have to make? You will note that we have deleted a number of questions leaving only the essential ones because the subsections we have kept are the only ones which have a practical value. All the other information which was requested under the previous section was, I would say, an undue burden on the companies to disclose details in which no one had any interest. For that reason we have kept it down to what is essential.

Mr. GRAY: Could I go back to page 36 for a moment? Section 123(2) permits the appointment of an employee of a private company under the circumstances in which they find themselves. Is this found in any of the provincial jurisdictions in these terms?

Mr. LESAGE: I think we have taken this from the draft uniform act. I think it comes from other jurisdictions. I do not remember exactly where it comes from. It is not an innovation of the drafters of that bill. This comes from other jurisdictions. We found it very practical and it received unanimous consent that auditors be appointed from among the directors or employees when dealing with small companies.

Mr. GRAY: This section says “upon the unanimous vote of the shareholders of a private company present or represented at the meeting”. This is somewhat different from an earlier section. Is not the appointment of an outside auditor a very important protection, especially in a private company?

Mr. LESAGE: Perhaps I could say that the new Manitoba company act has an identical text which says “upon the unanimous vote of the shareholders of a private company.” We think that the unanimous vote is usually strong enough. If a person is not there, then it is perhaps because that person is not interested or may not be in a position to sit on the board of directors or to indicate his intention. This would bar the company from taking advantage of that subsection. We think that a unanimous vote passed at a duly convened meeting of shareholders would be sufficient.

Mr. GRAY: Would this not be a question of sending out appropriate material before the actual meeting?

Mr. LESAGE: Anyone who is invited to an annual meeting knows what is going to happen regarding the appointment of auditors. The appointment of auditors and receipt of the auditors' report is a matter which comes at each and every annual meeting.

Mr. GRAY: Yes, I realize that, but is that not different from the question of the appointment of an auditor who may be a director, officer or employee of the company?

Mr. LESAGE: It would be different if we were dealing with a public company, but this exception is made so as to render it easier for the very small companies by permitting them to select an auditor from the directors, officers or employees in that company. There is also an exception here, that this may be the case if this is not a subsidiary company of another company. It is clearly intended only in the case of very small affairs.

The CHAIRMAN: We are now considering page 38.

Mr. LESAGE: When we were before the Senate subsection 4 of section 5 was amended. This morning I have a further amendment to line 26. This is an oversight which we wish to correct because subsection 4 of section 5 was split by the Senate and paragraphs (d), (e) and (f) were transposed in section 140A, which is a new section. It was therefore necessary to change line 26 to read "(c) of subsection (1) of section 140A". This is only a typographical error which we want to correct.

The other important matter on page 38 concerns the dissolution of companies which fail to comply, for three years or more, with the requirement to file their annual summaries. This regards companies which have died a natural death. We will now be in a position to remove them from the list of active companies.

The CHAIRMAN: The amendment you made is in line 26. Does that not read as it is now?

Mr. LESAGE: It will now read "(c) of subsection (1) of section 140A" instead of "(f) of subsection (4) of section 5".

Mr. MORE: Line 25.

Mr. LESAGE: Line 26.

Mr. MORE: We have two different propositions.

The CHAIRMAN: We already have it.

Mr. LESAGE: It was amended by the printer. It is a clerical error which has been corrected.

Mr. GRAY: This section provides for dissolution of the company by the Secretary of State for failure to file returns, and on page 13 there is provision for surrender of charter.

Mr. LESAGE: Voluntarily.

Mr. GRAY: Yes, I have not seen anything which empowers the Secretary of State to cancel the charter under circumstances similar to those concerning the Hett clinic in Windsor where it is alleged the charter is not being used in a manner consistent with the public interest.

Mr. LESAGE: We will come to that in sections 140A, 145 and 147, where some sections of part I are being made applicable to part II.

The CHAIRMAN: We will proceed to pages 38 and 39. Are there any comments?

Mr. LESAGE: The only comment I have to make is that we were almost the only jurisdiction not providing for amalgamation. We now are providing for amalgamation of companies through a procedure which may be slightly different in its approach to the procedure applicable in Ontario and Quebec, under the draft uniform act, and in many other jurisdictions. However, this was very carefully redrafted, and it permits amalgamation.

The CHAIRMAN: We will move over to page 42.

Mr. LESAGE: In clause 43 we have the concept of new section 140A which provides for the winding up of companies in three specific circumstances:

- (a) fails for two or more consecutive years to hold an annual meeting of its shareholders,
- (b) fails to comply with the requirements of section 121E or 121F, or
- (c) defaults in complying for six months or more with any requirement of section 125,

Although the procedure for winding-up under the Winding-up Act appears to be rather strong, it is not left in the hands of the administrative people, but rather to the courts of justice which in every instance will hear evidence when we are going to ask for dissolution in any of the three cases outlined in (a), (b) and (c).

Mr. LAMBERT: Of course, we do not have the whole of the Companies Act before us, but I am wondering, in respect of (a) and (b) particularly, what are the automatic disabilities under which a company could not be able to maintain an action in court, could not register property in its name, and could not defend an action in court. These are disabilities which are attached to companies which are not in good standing. These three points refer to companies not in good standing with regard to the filing of returns. I have in mind the provisions of the Alberta companies act whereby if you failed to file your annual return and the company has property it wishes to register in the land titles office, it cannot do so until it files its annual return.

Mr. LESAGE: This was the original joint stock company law and this was the Quebec law up until recent years. It was found to be so drastic in respect of the nullity of private contracts, that it was not found advisable to declare in the act a nullity which would affect third parties. Under the sanctions which are provided in section 140A, the matter is left in the hands of the court to decide whether or not there should be a winding-up.

Mr. LAMBERT: I did not introduce the case of a company which by being in default could not act and in respect of which any of its actions were nullities, no; but, rather, the company which could not launch a legal action. The first difficulty is with regard to the issuance of the statement of claim; the company is in default and not able to maintain an action; or, conversely, if it were in default and being sued, indeed it could not file a defence if it were in default. These are effective remedies; they are not drastic ones. All you have to do is file your annual statement.

Mr. LESAGE: I agree, but this would not permit the department to take positive action to dissolve the company. That is what it would need to clear our files and permit the department to go before a court of justice to say that a company must be wound up. If you are the defendant company and you comply, you have to pay the costs, and the department would withdraw the action; if they do not do so, we proceed to the winding up. In the Senate they told us we are asking for a big stick. I think that really is what is needed. There is no other way to have the companies comply.

Mr. LAMBERT: I agree with you there, but I am wondering whether you are being given another stick with which to beat minor offences. This is a wonderful incentive for companies to file their annual returns, and I can assure you it is highly effective and not very costly.

Mr. LESAGE: We have maintained the old provision in subsection (4) of section 125 that we can sue defaulting companies for an offence, but everyone knows that never has been effective; it would cost \$200 or \$300 for the government to make the investigation and to pay the R.C.M.P. and the agents for the Department of Justice, and so on, to collect the \$20 fine and \$11 of court fees.

Mr. LAMBERT: I agree with you, and may I commend for your favourable consideration the provisions in the Alberta companies act with regard to, shall we say, earlier action.

Mr. LESAGE: I thank you. That is the first time it has been suggested. When we come in with a revision of the act, this will be considered.

Mr. NOWLAN: It is in the Nova Scotia act as well.

The CHAIRMAN: We will proceed to page 43.

Mr. LESAGE: In section 147 we see that subsection (4) of section 5 of part I applies now to part II. If the corporation exceeds its objects or powers, it now may be wound up. Mr. Gray referred to a Windsor case where at the moment under the act we have no specific authority. This is what is intended by addition of the words in subsection (4) of section 5.

Mr. LAMBERT: This does not say who will authorize whom to play God. You are dealing with situations in which you say the company is not carrying on in an ethical manner, or in the manner for which it was conceived, and therefore the Secretary of State will have power to go before the courts to have it wound up.

Mr. GRAY: I think what Mr. Lambert is saying contains the answer. If he studies the situation to which I referred, he will find it has been alleged that this type of charter can be used to permit the unlawful practice of medicine, possibly gambling operations, and so on. If you look at the report of the Ontario crime commission, you will see in general terms what I am referring to. I say that the protection is alluded to in your own answer because presumably the people have the right to be represented by counsel and presumably there would be the right of appeal, and so on. I think that would provide the necessary protection.

Mr. LAMBERT: Who would motivate the Secretary of State; who would motivate the registrar to advise the Secretary of State that this application should be made?

Mr. GRAY: It is the same type of motivation as under any act; it is either an official of the department who takes the initiative, or under provincial law the administrative authorities, or ordinary citizens.

Mr. LAMBERT: Why not on a petition?

Mr. GRAY: In the first place, this is not likely to happen if we are talking about the same thing. The medical association, for example, is given sanction under a provincial act, and I would think it would be rather peculiar if the provincial attorney general had to make a petition to the Secretary of State for Canada in some way before he could carry out some investigation leading to court proceedings.

Mr. MOREAU: This appears to be quite agreeable to the Secretary of State. He would have the power to refuse an application for a charter or supplementary letters patent. Would you say that if he is granted that power, he should have some power to initiate action against a company?

Mr. LAMBERT: No. I feel the Secretary of State will do it for a frivolous reason. The permission granted to him is a general one. In some ways I agree with Mr. Gray that there must be a remedy, but I would like to see an explanation of how it will work. Obviously, the attorney general of a province and the Secretary of State would co-operate; I am perfectly in agreement with that. In the same way, the College of Physicians and Surgeons might lay a formal complaint before the Secretary of State to initiate certain proceedings. However, I am asking what will the Secretary of State require to motivate him to go into this type of action?

Mr. LESAGE: Sufficient evidence from anyone who had a complaint, any association or any department, whether it be the department of the attorney general of the province or the provincial treasurer, the health department of a

province, or whatever it may be. It may be a municipality also. In some instances we have acted upon requests by a municipality. Ten years ago there was a case in Vancouver of a gambling club. The Vancouver authorities requested we initiate the proceedings, and the proceedings terminated in the cancellation of the charter. However, we were at a disadvantage because we had nothing in the act. We were only at common law instead of having a statutory provision to protect us.

Mr. GRAY: Let me add that the provisions of section 4 are not to permit elaborate or frivolous application. The application can be made by the attorney general of Canada only upon the receipt of the certificate of the Secretary of State setting forth his opinion that any of the circumstances referred to apply to the company in question. I am sure the Secretary of State for Canada and the permanent officials of the department are no less responsible than are those of any provincial department, and even if they act on their initiative after a matter is brought to their attention, even by private citizens, I am sure they will not do it in any frivolous way.

Mr. LESAGE: We cannot act upon a complaint only. The complaint must be accompanied by evidence. The Department of the Secretary of State is not an investigating agency; we cannot investigate our cases ourselves. If there is any private complaint, we will ask for the evidence. In the case of a provincial department or a municipality, there is no difficulty because no such complaint would come to us without the evidence having been prepared in advance by the provincial police or the municipal police. In this case we would have sufficient facts on hand to enable us to ask the attorney general of Canada to proceed. However, if we receive a mere complaint from a person or a group of persons, and if they do not supply us with the necessary evidence, we cannot do anything. Unfortunately, this has happened in a few instances; they do not give us the necessary evidence.

There also is another problem. In so far as the practice of a profession is concerned, we think there are some provincial rights which have to be respected. We do not like to intervene in a field which comes under our Companies Act and which, at the same time, concerns a provincial jurisdiction.

The CHAIRMAN: Page 44.

Mr. LESAGE: The most important clause on page 44 is clause 50 in which we ask for the repeal of Part IV of the Companies Act, but to come into force only by proclamation of the governor in council.

Since 1898 Part IV has regulated the issue of licences to foreign mining companies operating in the Northwest Territories. This was inserted in the Companies Act long before the creation of the Department of Northern Affairs and National Resources which, since its creation, the department of the Secretary of State has continued to operate and is ready still to operate the section. However, this is a matter that concerns the Territories themselves, and we wish to have authority to hand over to that department, when they are administratively ready to take over, a function which is within their own jurisdiction.

Mr. LAMBERT: Clause 47 deals with annual meetings and reports of corporations incorporated under a special act. I take it this is consequent upon some of the observations that have been made in the miscellaneous private bills committee when it has been incorporating various companies. The results of this clause is to retain your contact with companies incorporated by special act.

Mr. LESAGE: That is correct.

May I turn to section 208A? We discussed this earlier; it deals with the bilingual names of corporations incorporated otherwise than by letters patent and gives us authority to change those names without the necessity for the companies concerned to come to parliament for that purpose.

There is an omission on the last page concerning the date of commencement of the amendments, and I wonder if it could not be inserted by the addition of a clause 53. You will appreciate that it is not possible for the department or for the companies to change everything overnight. We had dreamed of March 31, but we think the delay would be too short and that a further delay of three months would be more convenient to all companies.

Mr. LAMBERT: July 1, 1965.

Mr. MOREAU: July 1, 1965; I agree.

Mr. LESAGE: I agree, Mr. Lambert. That is all I have to say.

The CHAIRMAN: Gentlemen, before the committee adjourns may I suggest that we reconvene after orders of the day to start carrying the clauses of the bill?

Thank you, gentlemen. With your indulgence, we will meet here after orders of the day.

TUESDAY, March 9, 1965.

AFTERNOON SITTING

The CHAIRMAN: Will the committee please come to order. If it meets with your approval I shall now begin to call the clauses forthwith.

Clauses 1 to 10 agreed to.

On clause 11—*Definition of "mutual fund share"*.

Has everyone received a copy of the proposed amendment?

Mr. MOREAU: There is to be a change in it.

Mr. LESAGE: Yes, following discussion with Prof. Williamson this morning he said that he is entirely satisfied with the splitting of subclause 4 into (a) and (b), and that (b) meets his objection. That is what Mr. Williamson told me this morning, and we went over it on the telephone during the week end. After discussion this morning he said that he was perfectly in agreement with that one, and was satisfied with that clause and with that amendment, and with the amended clause 11 for mutual funds.

The CHAIRMAN: I understand that that one has been circulated, and there is no dispute about it.

Mr. LESAGE: There is no change.

Mr. LAMBERT: I move the amendment as proposed by the registrar.

The CHAIRMAN: Is there any seconder?

Mr. MOREAU: I second the motion.

The CHAIRMAN: Shall the amendment carry?

Agreed.

Shall the clause as amended carry?

Carried.

Clause 11 as amended agreed to.

Clauses 12 to 20 agreed to.

On clause 21—*Cancellation of preferred shares*.

Mr. MOREAU: There is something in 21.

The CHAIRMAN: I understand there are two amendments in 21.

Mr. LESAGE: There are two amendments, one of which we had before, and the new one we had this morning after discussion with Prof. Williamson.

The CHAIRMAN: The first one was line for where he puts the words "section, where pursuant to subsection (1a) of section 12—"

Mr. MOREAU: Yes.

The CHAIRMAN: And after line 11:

—of the company shall be thereby decreased; and subsections (1) and (2) of this section and subsection 51 to 58 to not apply.

Mr. MOREAU: I so move.

Mr. LEBLANC: I second the motion.

The CHAIRMAN: Does the amendment carry?

Carried.

Does the clause as amended carry?

Carried.

Clauses 22 to 26 agreed to.

On clause 27—*Purchaser or redemption of its shares by a company.*

Mr. LESAGE: There are two amendments; one is the same that we had previously, and another was discussed with Prof. Williamson this morning.

The CHAIRMAN: The amendments proposed are being distributed now. I think everyone has a copy of the proposed amendments, but we shall wait until someone indicates his intention to move the amendment.

Mr. LAMBERT: I so move.

The CHAIRMAN: It has been moved by Mr. Lambert.

Mr. MOREAU: I second the motion.

Shall the clause as amended carry?

Carried.

Shall the clause as amended carry?

Carried.

Clauses 28 to 38 agreed to.

The CHAIRMAN: We are now on clause 39.

On clause 39—*Books of account and accounting records.*

Mr. LESAGE: I have three amendments. The first I have is at line 44 on page 27. Clause 39 continues over to page 37, a matter of 15 pages.

The CHAIRMAN: On page 27, the amendment is at line 44, and it reads as follows:

—redemption price thereof, and indicating separately any class of shares that is redeemable out of capital.

Mr. MORE: We have not got that one.

The CHAIRMAN: I am sorry. It is being distributed.

Mr. MOREAU: Perhaps we should take up clause 39 subsection by subsection because it is very long.

The CHAIRMAN: All right then. We are now on clause 39 and I shall start in with section 115 on page 22. Does that section carry?

Carried.

Shall section 116 carry?

Carried.

Mr. MOREAU: Clause 117 relates to this. That is the point I would like to clear up; it relates to section 121F.

The CHAIRMAN: This is on page 23, section 117.

Mr. MOREAU: We have here a statement of profit and loss which will be placed before the annual meeting of the shareholders unless and provided that the chief justice or the acting chief justice of the province gives them dispensation. I wonder about this when we go to page 34, section 121F.

Supposing this dispensation was obtained from the chief justice or the acting chief justice of a province concerning the profit and loss statement. I presume this would apply to section 121F, subsection (1), in that it is the same information that is being sought after. That is what I am trying to clear up.

Mr. LESAGE: That is so, you are right.

Mr. MOREAU: I wanted to make sure about this.

Mr. LESAGE: Yes. It seems to me that the dispensation granted in section 117 does not cover the point in 121F.

I do not think so, because in section 117 it covers only one slight point in the financial statement. This is only one object of the type of information required to be disclosed; whereas in 117 (1) you have it subdivided under (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), and the exception of (a) applies only to what is stated in (a), to the amount of their sales and their gross revenue only, but not to all the financial statements.

Mr. MOREAU: It could cover profit and loss.

Mr. LESAGE: No, it does not apply to profit and loss in (b). The exception is only for the amount of sales or gross revenue which the company may, with permission of the judge, not disclose to the shareholders.

Mr. MOREAU: I was only concerned this morning, when I asked questions concerning 121F, that we were going to make public information which was going to be denied under section 117. If this does not apply in that way, my thoughts on section 121F, subsection (2), are considerably different and I feel that perhaps we should take time on these.

The CHAIRMAN: We are on page 123.

Sections 117 and 118 agreed to.

Mr. LESAGE: There is an amendment to section 119 on page 27 at line 44.

The CHAIRMAN: On page 27 at line 44 there is an amendment. This amendment has been distributed. The amendment is that clause 39 be amended by striking out line 44 on page 27 and substituting therefor the following:

—redemption price thereof, and indicating separately any class of shares that is redeemable out of capital;

Amendment moved by Mr. More, seconded by Mr. Rynard.

Amendment agreed to.

Section 119 agreed to.

Mr. LESAGE: There is an amendment to section 120. I had to write this amendment by hand.

The CHAIRMAN: The amendment is that lines 37 to 38 on page 29 be deleted and the following substituted:

—bonuses, fees and other emoluments

Mr. DOUGLAS: You are striking out "contributions to pension funds and other emoluments" and substituting—

The CHAIRMAN: The words "bonuses, fees and other emoluments".

Mr. DOUGLAS: And deleting "registered contributions to pension funds"?

The CHAIRMAN: Yes.

Mr. DOUGLAS: Why?

Mr. LESAGE: This is merely an amendment which is consequential to another amendment which was agreed upon in the Senate. It was an oversight when the bill was recopied that those words were not struck out at this place as they were in another place.

Mr. MOREAU: Would the term "other emoluments" include pension funds?

Mr. LAMBERT: Of course it would. This includes the total remuneration received by the director; it includes salaries, bonuses, fees and other emoluments.

Mr. MOREAU: That is my interpretation.

Mr. DOUGLAS: The original draft requires the pension contribution to be shown separately.

Mr. LESAGE: Yes; the original draft did, and this was taken out by the Senate.

Mr. DOUGLAS: Do you know what reason they gave?

Mr. LESAGE: I cannot remember accurately enough to quote what was said in the Senate.

Mr. MOREAU: As I understand it, the pension remuneration would be included in the total.

Mr. DOUGLAS: It will be included in the total, but will not be segregated.

The CHAIRMAN: Are there any questions before I put the motion?

Amendment moved by Mr. Lambert, and seconded by Mr. Leblanc.

Amendment agreed to.

Sections 120, 121, 121A, 121B, 121C, 121D, 121E agreed to.

Mr. MOREAU: Mr. Chairman, I wish to propose an amendment to section 121F. I move the deletion of subsection (2) entirely.

Mr. LAMBERT: Have you read the proposed amendment?

Mr. MOREAU: Yes. I do not quite agree with it. By this provision which Mr. Lesage kindly has drafted, I thought we might be in the position where we would be disclosing information to the public which had been denied to the shareholders under section 117. This subsection was not in the original bill. I think the trend in the country and in other jurisdictions is the opposite and I do not feel this subsection should be here at all. I so move.

Mr. LEBLANC: I second the motion.

Mr. LAMBERT: I think this completely negates anything that we have provided for in the earlier provision.

The CHAIRMAN: In section 117.

Mr. LAMBERT: In Section 117A. Also, I think, in the appropriate case, there should be an opportunity to go before a chief justice to present the disclosure. It must be noted that subsection (2) as it appears on page 34 is in the negative version. It says those documents shall not be open to the public unless the Secretary of State has the written permission, or words to that effect. However, the amendment proposed by Mr. Lesage says that the documents shall be opened unless permission shall be obtained from the chief justice that they should not be disclosed. This is a horse of an entirely different colour. With the greatest respect, again I feel we must have this safety valve; that is, in the ordinary case where it would be not in the public interest to have the documents open to the public, you would go to a chief justice and state your reasons. Otherwise, there would be nothing to stop documents being examined. Under the proposal by Mr. Moreau, there is nothing that could stop the registrar granting such a request, even though he knew it could be deleterious and contrary to public interest. For this reason I would be opposed to the proposal by Mr. Moreau. While I do not like the original version, I certainly am quite prepared to support the proposal being put forward by Mr. Lesage as an amendment.

The CHAIRMAN: Do you wish to move an amendment to the amendment?

Mr. LAMBERT: I cannot at the moment.

Mr. MOREAU: If I may speak for a moment on this, Mr. Chairman, it seems to me we got along for a good long while without such a section in the act. This is not in our present act. The whole idea that we would certainly be putting limitations on disclosure introduces a new concept into the Companies Act which I do not feel should be there in principle. This after all deals with

public companies. I personally feel that an enlightened company today—and this includes most of our major corporations—relies on disclosure of information to the public and to the shareholders. This is a protection to the companies. I think that when there is insufficient disclosure, the stocks are sometimes underpriced. There are takeover manoeuvres which go on sometimes. I do not feel this really helps the shareholder; on the contrary, in certain instances it may be contrary to the interests of the shareholders. Further, I think we are getting here partly at the problem of insider trading. I think that the Ontario jurisdiction certainly appears to be one of the more important consideration and it seems to be moving in the opposite direction. Every securities exchange commission in the province is moving in that direction, and suddenly we in the federal scene would be moving in the opposite direction. I feel this is contrary to the present trend and contrary to the public interest.

Mr. LAMBERT: And yet, Mr. Chairman, this appears in the revised Companies Act.

Mr. MOREAU: We have not been able to find one that had.

Mr. DOUGLAS: Do I take it that the documents referred to in section 121F, subsection 2 have to do with documents referred to in section 121E, subsection 1?

The CHAIRMAN: Yes.

Mr. DOUGLAS: Those are documents which are mailed to each shareholder, so therefore all you are saying, if the committee accepts Mr. Moreau's amendment, is that none of the documents sent to a shareholder can be withheld, and that they shall be open to the public.

The CHAIRMAN: That is my understanding of it.

Mr. DOUGLAS: It seems to me that if it is information which is given to the shareholders, there is no reason why the public should not have access to it. Already under section 117 certain information may be withheld from the shareholder, if it is confidential information which would harm the competitive position of the companies. That is already being withheld from the shareholder. However, if it goes to the shareholder it ought to be available to the public.

The CHAIRMAN: If there is no more discussion I will put the question on the amendment. Is everyone agreed on the amendment? There is a request for a recorded vote. All those in favour of the amendment? Nine. Contrary? Three.

Amendment agreed to.

Sections 122 to 124 inclusive agreed to.

Shall the clause as amended carry?

Clause agreed to.

Clause 40 agreed to.

On clause 41—*Special returns*.

Mr. MOREAU: I have a comment on section 125A, Mr. Chairman. The consequential amendment of the action we took on section 121F I think applies again in 125A. I do not quite understand the reason for having this section at all.

Mr. LAMBERT: It deals with the private company.

Mr. MOREAU: I wonder what sort of special terms we are dealing with here?

Mr. LESAGE: This section 125A was borrowed from the Ontario Companies Act and was rejected as such in the Senate because the previous text gave authority to the Secretary of State to ask companies for any type of information, and so the private companies when asked by the Secretary of State would have had to disclose more than the public companies. Therefore 125A(1) was

limited to the same disclosure as the public companies, that is to say, to the financial statement. The Secretary of State can ask a private company for its financial statements, that is to say the requirements provided for in sections 115 to 122. Since it is a private company, this subclause 2 was added so as to prevent disclosure of information from the private company by the Secretary of State.

Mr. MOREAU: It seems to me there is a very serious problem involved here regarding the subsidiary company of a corporation which may, under this act, be described as a private company. I feel that this again is not in the public interest. I think it is very important that we do get this disclosure. My remarks are directed primarily at a situation where we have a private company which is a subsidiary of a corporation. I wonder if we could perhaps strike this section out entirely, or alternatively define a private company, as Mr. Gelber suggested. We would then apply the law to a private company which had corporate shareholders. I do not feel we can leave this section in together with 121F because of this conflict between them, that is between a company incorporated in Canada and one which has been incorporated as a private company with corporate shareholders.

Mr. LESAGE: I would rather see this deleted from the act entirely.

The CHAIRMAN: You would prefer to take the whole thing out than to delete subsection 2?

Mr. LAMBERT: I think that would be preferable because, frankly, what Mr. Moreau has done in his original amendment was to create more mischief than he intended to cure. With all due respect to Mr. Moreau, I do not know whether he has foreseen the full implication of his action in the previous amendment and certainly in this suggested removal of subsection 2 of section 125A which would frankly be removing the whole of the protection that is given to private companies in their classification. In other words, the amendment would be trying to do indirectly what you cannot do directly.

Mr. MOREAU: I did not move any amendment, Mr. Lambert. I am quite aware of the problem that exists. I wonder if we could not make a distinction between a private company and a private company that has corporate shareholders. I am quite prepared to go along with the complete deletion of section 125A.

Perhaps we can get at this problem in another way, or by the other bill we have passed, the disclosures act.

Mr. LAMBERT: I cannot understand this predilection for picking on a private company in isolation, a company which has corporate shareholders. I know many private companies which are controlled by other private companies which are perfectly legitimate.

Mr. MOREAU: Then let me say public corporations.

Mr. LAMBERT: That is a different story, and even then I am not too sure that it is necessarily right that just because a company is owned by a public company, ipso facto it should be in a suspect class. I cannot see that.

Mr. MOREAU: I go along with the complete removal of section 125A. What I am aiming at is perhaps better approached by the Corporations and Labour Unions Returns Act. I certainly do not want to create any problems for a private corporation, but I think Mr. Lambert would agree that if there is abuse in the distinction between private companies and public companies it is in the case in which we have public corporations holding shares in a private company. I think perhaps the Corporations and Labour Unions Returns Act would look after the problem. I would certainly go along with the complete deletion of section 125A, and I so move.

The CHAIRMAN: There is a motion that section 125A be deleted; that will include both subsections (1) and (2). Is there a seconder for that?

Mr. DOUGLAS: I second the motion.

Mr. LAMBERT: You want to delete the whole of clause 41?

The CHAIRMAN: Yes.

Mr. LESAGE: Yes, that is far better.

The CHAIRMAN: It has been moved and seconded that clause 41 be deleted.

Mr. BASFORD: I do not see the need to delete it. I do not understand Mr. Moreau's amendment because disclosure of the public company's returns should, I think, be provided for in the act.

Mr. Moreau has cited instances of possible abuse by private companies, and surely section 125A does give some procedure, if there are abuses, to look into them by order of a judge. To cross out the section altogether certainly does not give any protection.

I would not like to see full disclosure of a private company, but here is a method—the decision of a judge—by which those informations can be disclosed.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): I would like to hear Mr. Lesage's viewpoint on this.

Mr. LESAGE: I have very little to say with regard to section 125A. It was first inserted in the bill at the interdepartmental committee stage when, as I told you, we had the advantage of the presence of three solicitors from outside. They were aware of an omnibus clause in the Ontario Act which permitted the department to obtain some information from companies. They asked for that clause to be inserted in the Companies Act as section 125A. At that time I maintained, and I still maintain, that for departmental purposes we do not need it, and we have never needed such an omnibus clause because when we request information from private companies it is in order to issue supplementary letters patent changing or varying the capital stock of those companies. Each and every time we have been given the fullest possible co-operation of the company requesting such changes in its letters patent. When they said, "why don't you put it in your act?" I could not see that it would do any harm, but I could not see any useful purpose in it either.

When the bill reached the Senate they said, "If you're going to obtain that information, then it should be kept confidentially in the department." Here again I could see no objection to keeping it confidential because when we have requested that information from companies we have obtained it on a confidential basis. That method of working has been the same for 96 years and no difficulty has been encountered with it. That is why this afternoon if someone appeared to be unhappy about that part of 125A I could see no objection in having it deleted, because the department will be able to continue and will be able to obtain the same co-operation from companies.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Is it conceivable that at some time in the future the government might have need of this type of information if they were worried about the takeover of a Canadian company by a United States corporation, for example? Could this information not conceivably be useful to you people if you were requested by some other department of the government to give this information?

Mr. LESAGE: We have never received a request by any other department for the financial position of private companies. This is only a possibility. If the government were to adopt a policy, I think it would result in legislation, and that legislation would cover this point. I do not see any need for it at this moment. I did not see any need for it at the time it was inserted in the bill, and I still maintain the view that it is not necessary and that it can disappear without any damage being done.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Suppose Mr. Gordon were to be asked in the House of Commons about a proposed takeover of a private company, and suppose he wanted some detail. He would come to you and ask for details. Would this not supply you with a method to obtain the details for the Minister of Finance, whoever he happened to be at the time?

Mr. LESAGE: We could obtain those details for another department, of course; this would be possible. However, so far we have never been asked for such information. If we were asked, we would endeavour to give what we have, and that is all. I do not think foreseeing possible changes in the policy should dictate an amendment in the Companies Act at this moment. When the problem arises, then the government will introduce legislation. So far, we have no problem.

Mr. BASFORD: You see no harm in it being in the act?

Mr. LESAGE: If it is there in full, I see no harm.

Mr. BASFORD: What do you mean by "in full"?

Mr. LESAGE: With subsections (1) and (2); and even without subsection (2) I think the department would not disclose the information to the public. The Secretary of State, as any other minister, has the right to open or close files to the public. Under section 121F, even if subsection (2) has been deleted, the department can very well keep the files closed upon the ministerial discretion.

Mr. LAMBERT: That is hard.

Mr. LESAGE: But that is the law as it is for all departments; that is the general law. We were better with some clarification. The committee has decided to take it out of 121F, so we are falling back to where we were, but we are not opening any financial statement to the public by taking off section 121F (2); we are doing nothing at all.

Mr. DOUGLAS: But, is it not possible under this act?

Mr. LESAGE: No, it is not possible; it is illegal.

Mr. DOUGLAS: It is illegal to pay a certain amount and obtain this information.

Mr. LESAGE: Mr. Douglas, there is a judgment of the supreme court in this regard, although I do not have the exact reference. It was in respect of a British Columbia case about ten or fifteen years ago, where it was held that it is up to the minister to decide whether such information contained in the departmental files should be disclosed, except in major criminal cases, where the files must be produced because there is a major interest in criminal law. But, this principle outlined by the supreme court does not go any farther than that, and we are still where we were before.

Mr. DOUGLAS: Even with private companies?

Mr. LESAGE: With private and public companies.

Mr. DOUGLAS: I meant to say public companies.

Mr. LESAGE: Even with them, exactly.

Mr. MOREAU: Mr. Lesage, there is nothing in this act which prevents this. Certainly, the information could be made public if the minister decided it should.

Mr. LESAGE: Of course, but if he decides not to, that is another thing.

Mr. MOREAU: But, my point is that the deletion of subsection (2) of 121F did accomplish something, in that the minister can make these documents public. If we left that subsection in he could not. Also, I am opposed to subsection (2) of section 125A. I would prefer to see the whole section go.

Mr. LESAGE: I would too.

Mr. MOREAU: As I said, I would prefer to see the whole section go rather than to recognize this principle as embodied in subsection (2), that the Secretary of State requires permission of a chief justice or acting chief justice to make some of this information public. I think this is contrary to the present trend and I am totally opposed to it. As I said, I would rather see the whole section go.

Mr. LESAGE: I would, too. I would agree with you in that connection.

Mr. LAMBERT: In what respect are you making those remarks?

Mr. MOREAU: Well, securities and exchange commissions are moving in this direction.

Mr. LESAGE: But, Mr. Moreau, that is not the same field. That is where a mistake can be made very easily. It is easy to mix up the concept and the principles of the securities commission legislation and corporate law. Corporate law is one thing and securities commission law is another very different thing. From a constitutional point of view, I do not know whether or not the federal government has authority to enter into the field of securities commissions. Because the federal government has not gone that far. I do not think we, through the Companies Act, can achieve something which other jurisdictions do not exercise. The Companies Act must be at the same level of corporate law as the companies act of the ten other jurisdictions.

Mr. MOREAU: Why?

Mr. LESAGE: Because any company incorporated under the federal companies act is also under the jurisdiction of the securities commission, and they must be kept at the same level. If and when the government decides to change the policy in that regard and go into that field, that will be a different story.

Mr. MOREAU: We are getting to the point of whether or not we should lead or follow the provinces. I think the argument could be used in the provinces that they cannot move until the federal government moves. It is being expressed here that we cannot move until the provinces do. Someone has to take the initiative and I think properly it should be the federal government. That is why I was opposed to subsection (2) of section 121F. I do not accept the view that we cannot do it because other jurisdictions have not done it, particularly when we have gone along without it for thirty or more years. I do not even want to see the principle recognized in subsection (2) of section 125A. As I said, I would rather see the whole section go.

Mr. LESAGE: Mr. Moreau, when you say the federal government should take the lead, there may be something in it, but everyone knows, in respect of corporate law, the federal jurisdiction is not the leader in Canada, so far as the number of companies are concerned. We are only one of ten jurisdictions. If we take the major companies—that is, those reporting under the Corporation and Labour Union Returns Act—from a personal review of our own files I note that there is a little less than 14 per cent incorporated federally, whereas there is 35 per cent incorporated in Ontario, almost 19 per cent in Quebec, 12 per cent in British Columbia and almost 8 per cent in Alberta. Next is Manitoba, with about 4.5 per cent. Those figures may not be accurate although they give us enough information to understand that if we do impose disclosure we are putting our federal companies at a disadvantage; we are discriminating against companies incorporated federally. We would be closing the door on federal incorporations and inviting the business people of the world of finance to go to the provinces for incorporation and, nowhere in their legislation, are they obliged to disclose anything. No other companies act in Canada other than the federal one requires the filing of financial statements. For that reason we have kept them confidential; otherwise, we would be discriminating against our own companies.

Mr. MOREAU: Do you see any adverse effects to the economy if they incorporated in Ontario or Quebec rather than requesting a federal charter? I do not see any difference.

Mr. LESAGE: Well, it is not up to me, as a civil servant, to express views on policy.

Mr. GREENE: Mr. Lesage, if I understand your evidence correctly, your view is that the Companies Act is to define the relationship between the federal incorporating authority and the incorporating body, not the public.

Mr. LESAGE: You are very correct. By definition, the Companies Act is one which relates, first, to the procedure of incorporation and, second, to the relations between the company and its shareholders. It has nothing whatsoever to do with the public generally except for the filing of prospectuses of those companies offering their shares to the public. This is the only exception but it is an exception to the principle behind the Companies Act, and it is the same in the 11 jurisdictions. If the provinces want to break that principle they go through another legislation, through the securities commission, but not through their Companies Act.

Mr. GREENE: In other words, if we feel that there should be more open disclosure of corporate affairs, it should not be done through the Companies Act?

Mr. LESAGE: No, not at all. I feel that it should be done in another statute. That is exactly my view.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): Mr. Lesage, coming back to this question of American takeover of Canadian industry, by leaving this section in, could it be conceivably helpful to the minister seeking information with regard to a private company, or do you feel that this should be handled by separate legislation.

Mr. LESAGE: Separate legislation.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): But at the moment there is not any separate legislation?

Mr. LESAGE: No. It is a matter of government policy whether or not, constitutionally, it has jurisdiction and, although I do not know, I doubt it.

Mr. GREENE: Could this conceivably be of some use to the government if it were seeking information about the status?

Mr. LESAGE: It could be of some use for that purpose; but this is not the purpose for which it was inserted in the bill. I have told you the purpose. It was only to have an omnibus clause, as other jurisdictions have. If this is going to cause more trouble than good I would rather that we continue as we have done in the last 100 years.

Mr. DOUGLAS: I was under the impression, Mr. Lesage, that in a number of provincial jurisdictions under their Companies Act, when dealing with public companies, you are permitted to pay a small fee, in return for which you can have the information which is available regarding that company, such as the names of directors.

Mr. LESAGE: Yes, we have that too.

Mr. DOUGLAS: And the last financial statement filed?

Mr. LESAGE: No. We have the provision with respect to the names and addresses only of the directors. We maintain that by our section 125. This is information which has always been available and will continue to be available under section 125.

Mr. DOUGLAS: But not the financial statement?

Mr. LESAGE: No. Even the draft uniform act, which is going very far in corporate law, does not contemplate the filing of financial statements with the

government authority, because it is not a matter for the Companies Act. This is a matter for the securities commission. It is a matter for other legislation. It is not even contemplated by the 10 jurisdictions and by the draft uniform act. When we were asking for more secrecy on those documents, which we happen to have in our Companies Act, it was only to put those incorporated under the Companies Act on the same level as anyone else in this country. This is all we are asking. We are not asking to hide something from the public.

The CHAIRMAN: You would rather have the whole of section 125A out then?

Mr. LESAGE: Yes.

The CHAIRMAN: It has been moved by Mr. Moreau, seconded by Mr. Douglas, that clause 41 be deleted. If there is no further discussion I will put the question. Have you heard the motion, gentlemen?

Some hon. MEMBER: Would you restate it.

The CHAIRMAN: I do not know whether I should make a comment on the previous amendment. I think the amendment now meets with Mr. Lesage's wishes. However, Mr. Lesage is speaking as a civil servant and therefore expresses no policy. It is moved by Mr. Moreau and seconded by Mr. Douglas that clause 41 be deleted.

Mr. BASFORD: Mr. Lesage informed me that he saw no harm in leaving it in.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): He also indicated that there was a conceivable use for it.

The CHAIRMAN: I do not intend to say anything further on the matter.

Mr. WATSON (*Châteauguay-Huntingdon-Laprairie*): I think, Mr. Chairman, that we should reiterate the fact that it may, conceivably, be of some use to the federal government in determining the status of a company that is threatened by an American takeover. I think for that reason alone we should leave it in.

Mr. DOUGLAS: I think it should also be pointed out as Mr. Moreau said, that under subsection (2) this information could not be given even to another department of the government without the consent of the chief justice.

Mr. MOREAU: Yes. I think that principle is contrary to any principle that should be embodied in any provincial legislation.

Mr. LESAGE: The public does not comprise the other departments.

Mr. MOREAU: I mean there was a statement made earlier that the underlying philosophy of the Companies Act was the relationship between the government and the incorporating people. I think it is time that the law should be changed and that public interest also be considered.

The CHAIRMAN: Do you have a question, Mr. Kindt?

Mr. KINDT: Mr. Chairman, the weight of the evidence seems to be on the side of deletion simply because clause 2 requires the Secretary of State to go outside and receive recommendations from the chief justice. I agree with the gentleman who moved the motion that this clause is foreign to the Companies Act and whoever put it in there, I should think, is in error. As far as I am concerned, I vote for deletion.

The CHAIRMAN: Is there any further discussion? Are you ready for the question? All those in favour of the amendment to delete the whole clause. I declare the amendment carried.

Amendment agreed to.

Mr. KINDT: This means that all of clause 41 is out?

The CHAIRMAN: That is right. Now, subsequently I will have to have a renumbering motion but I will leave this to the end. There may be some other changes so I will withhold that until I run through the rest of the clauses, if I may.

Some hon. MEMBER: We will get this engineered yet.

Clause 42 carried.

On clause 43—*Grounds for winding up company.*

Mr. MOREAU: I have some notation here about the amendment in subsection (b) of section 140A.

Mr. LESAGE: There is still 121F, Mr. Moreau. It is only (2) that has disappeared.

Mr. MOREAU: Yes. I think perhaps that is what I was referring to.

Clauses 43 to 52 inclusive agreed to.

Mr. LESAGE: There is the addition of another clause here.

Mr. MOREAU: We are at clause 53: "This act shall come into force on July 1, 1965."

The CHAIRMAN: I am asking for a motion now that present clauses 42 to 52 inclusive be renumbered as 41 to 51.

Mr. MOREAU: I so move.

The CHAIRMAN: It has been seconded by Mr. More.

Motion agreed to.

Mr. MOREAU: You are now referring to clause 52?

The CHAIRMAN: Yes, a new clause 52, that this act shall come in to force on July 1, 1965.

Mr. LEBLANC: Would that not be contrary to clause 50(2) which says that this section shall come into force on a date to be fixed by the governor in council?

Mr. LESAGE: Yes, but I say no because the order in council may only come in five years from now. The governor in council will not be in a position to put into force clause 50 on page 44 before the commencement of this act. It will not be possible for that order in council to be issued before July 1, 1965. That is all it means.

Mr. DOUGLAS: The act comes into effect. This particular clause 50 cannot come into effect except by the governor in council passing an order.

The CHAIRMAN: Is there a mover for new clause 52?

Mr. MOREAU: I so move.

Mr. LEBLANC: I second the motion.

The CHAIRMAN: Seconded by Mr. Leblanc.

Motion agreed to.

Mr. LAMBERT: Before you put the title to the bill I wish to go back to clause 16 on page 12 which we already have adopted. I ask this question by way of information as to what Mr. Lesage would do. In the light of the Bonanza Creek case do you allow a company to carry on business under a name other than its incorporated name?

Mr. LESAGE: No.

Mr. LAMBERT: Even in view of the law in the Bonanza Creek case?

Mr. LESAGE: There is a prohibition in section 22 of the Companies Act which reads as follows:

The company shall keep its name, the last word of which shall be the word "Limited" or the abbreviation thereof, "Ltd.", painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on...

So a company must carry on its business under its own name.

Mr. LAMBERT: Oh, that is clear, but I beg to differ with you. While I agree that a company must affix its name to its place of business as its incorporated name, yet it could carry on business, for example, in its invoices, in its day to day relations, in its letterheads and so on, under another name. I think you will find that the Bonanza Creek case does permit this. It is certainly permitted in certain jurisdictions. I have obtained this permission from a number of provincial registrars, because we wanted to use a particular name which was not the registered name. This is a very good point. It may be a related name. For example, instead of saying XYZ limited we call it XY in Canada. That is the name under which it operated. British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario have all agreed to this. This is a point I address to you in your private capacity.

Mr. LESAGE: It is a very interesting point, but this matter was not studied in the bill and there is no amendment to section 22 in the bill itself.

According to our terms of reference we were required to prepare this bill and we were invited to make only the necessary changes. It is true that the terms of reference in the Senate were a little broader, and this accounts for the many amendments in the Senate. But even the Senate did not see fit to change anything in that respect. I would not say that this is the first time I have heard such a suggestion made. However, I shall take note of it and if and when we are asked to prepare a complete revision of the act, this may very well be considered. But at this time I must confess that I am not prepared to discuss such an important point on such short notice.

Mr. LAMBERT: Under clause 3(c) on page 12 there may be a little difficulty in the proposition which I propose. However, I am thinking of the T. Eaton Company of Canada Limited which carries on business under the name of Eaton's, and that sort of thing.

Mr. CAMERON (*High Park*): Do you mean that they are registered under partnership acts?

Mr. LAMBERT: No. I mean a name other than the one under which they are incorporated.

Mr. CAMERON (*High Park*): Companies do that every day.

Mr. LAMBERT: That is another method which Mr. Cameron suggests, by which a corporate body might operate under another name, under the partnership acts.

The CHAIRMAN: Shall the title carry?

Agreed.

Mr. GELBER: Have we passed clause 37 as printed?

The CHAIRMAN: We have passed every clause so far, and we are now down to the title.

Mr. GELBER: I understood Mr. Lesage was going to bring in some change in the wording of clause 37.

Mr. LESAGE: That was only because my copy was not the last edition, I think. That is when we cleared it up. There was a clerical error in my copy.

Mr. GELBER: I am sorry. People are talking around me and I cannot hear the answer.

The CHAIRMAN: We dealt with it this morning, when Mr. Gelber found that the bill distributed to the members as reprinted had an amendment contained in it.

Mr. LESAGE: No, it was not an amendment, it was a correction which was included in my copy.

Mr. GELBER: What is the correction.

The CHAIRMAN: It is at line 26 on page 38.

Mr. LEBLANC: I think it is line 25 of the revised copy.

Mr. LESAGE: It is line 26, but you may have read line 25 in your copy because of the corrections.

The CHAIRMAN: Yes.

Mr. GELBER: I do not have a copy that coincides with the bill.

The CHAIRMAN: At any rate it was dealt with.

Mr. GELBER: Yes, but I brought up the point at an earlier meeting and I understood that they reported this. I was discussing section 37 and subsection 98.

Mr. LESAGE: Oh, yes.

The CHAIRMAN: You are talking about a different amendment, then.

Mr. MOREAU: What page is your amendment on?

Mr. GELBER: It is on page 21, concerning the exclusion of corporations with a single beneficiary owner as long as that owner was not a public corporation. I thought Mr. Lesage was going to draft a slight change which would cut out a lot of paper work.

Mr. LESAGE: No, I do not remember having undertaken to do that.

Mr. GELBER: I think you will find it in the proceedings of an earlier meeting.

Mr. LAMBERT: If that is so it will appear in the proceedings, and by that time an appropriate amendment could be moved in the house and we could go back into full committee.

The CHAIRMAN: Yes. You have a further suggestion put forward by Mr. Lambert. In view of that may I ask if the title shall carry?

Carried.

Shall the bill as amended carry?

Carried.

Shall I report the bill as amended?

Agreed.

Is there a motion that the bill as amended by the committee be reprinted?

Agreed.

Mr. LAMBERT: If there is a question about reprinting, since there have been some amendments, and since some of them have been contrary to what was indicated in the Senate, we are now on a collision course with that eminent body.

Mr. MOREAU: I do not think these same sections will reappear in public.

Mr. LAMBERT: There will have to be some form of negotiation. I do not know whether you want to carry on a further printing and then negotiate.

The CHAIRMAN: It has to be reprinted. Let them look at it and see. I now will receive a motion for adjournment.



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